

RE: MEDIA QUERY FOR CLEARANCE - FFM - Mail on Sunday

From: Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
To: [REDACTED] <[REDACTED]@gov.scot>, Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>, Henderson G (Gavin) <gavin.henderson@gov.scot>, Bruce A (Andrew) <andrew.bruce@gov.scot>, Troup C (Colin) (Dr) <colin.troup@gov.scot>, Legal Secretariat to the Lord Advocate <dlpcealsla@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, Rennick NS (Neil) <neil.rennick@gov.scot>, DG Organisational Development & Operations <dgo@gov.scot>, Fraser L (Lesley) <lesley.fraser@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, Richards N (Nicola) <nicola.richards@gov.scot>, [REDACTED] (Maureen) <maureen.bruce@gov.scot>, Hynd JS (James) <james.hynd@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, French C (Craig) <craig.french@gov.scot>, Macniven R (Ruairaidh) <ruairaidh.macniven@gov.scot>, Solicitor to the Scottish Government <solicitor@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, Nicolson S (Stuart) Special Adviser <stuart.nicolson@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@transport.gov.uk>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, Veitch J (Jennifer) <jennifer.veitch@gov.scot>, Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, Fraser L (Lesley) <lesley.fraser@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>, Solicitor to the Scottish Government <solicitor@gov.scot>, [REDACTED]

Date: Sat, 20 Feb 2021 18:09:18 +0000

Hi [REDACTED]

~

DFM is content to clear.

~

Kind Regards

[REDACTED]

~

[REDACTED] Deputy Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government | Web: www.gov.scot | [01312263100](tel:01312263100) | Mobile: [REDACTED] | Email: DFMCSE@gov.scot | [REDACTED]

5N.07 St Andrew's House | Regent Road | Edinburgh | EH1 3DG

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments. Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

~

From: [REDACTED] <[REDACTED]@gov.scot>

Sent: 20 February 2021 17:42

To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: McFarlane J (John) <John.McFarlane@gov.scot>; Henderson G (Gavin) <Gavin.Henderson@gov.scot>; Bruce A (Andrew) <Andrew.Bruce@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>

Rennick NS (Neil) <Neil.Rennick@gov.scot>; DG Organisational Development & Operations
<DGODO@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; [REDACTED]
<[REDACTED]@gov.scot>; Richards N (Nicola) <Nicola.Richards@gov.scot>; Bruce MG
(Maureen) <Maureen.Bruce@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; [REDACTED]
<[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; McAllister C
(Colin) <Colin.McAllister@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; French C
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Solicitor to the Scottish Government <solicitor@gov.scot>; [REDACTED]
<[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; Nicolson
S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>; [REDACTED] <[REDACTED]
@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>;
[REDACTED] <[REDACTED]@transport.gov.uk>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED]
<[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>;
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(Constitution and Cabinet Director) <David.Rogers@gov.scot>; [REDACTED]
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<Colin.McAllister@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; [REDACTED]
[REDACTED] <[REDACTED]@gov.scot>

Subject: MEDIA QUERY FOR CLEARANCE - FFM - Mail on Sunday

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Deputy First Minister, PO,

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We have received similar inquiries from the Mail on Sunday and the Sunday Post ahead of the FFM's committee appearance. The queries and draft lines are below. Policy officials and spads have reviewed and the Lord Advocate has cleared for his interests.

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Grateful for an indication of whether the Deputy First Minister is content.

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Thanks,

[REDACTED]

~

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Mail on Sunday

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• We understand Salmond's evidence still makes clear that Nicola Sturgeon broke the Ministerial Code, can you respond to that.

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• We also understand his evidence will also state that the Scottish Government held several meetings about sisting the Judicial Review, is that correct? If so, why did you do that? Did you hope it would be placed after the criminal proceedings and effectively be overtaken by events?

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• Why has the Scottish Government continued to refuse to hand over all evidence to the committee, despite making assurances that it would assist fully?

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Draft Line

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A Scottish Government spokesperson said:

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"The First Minister stands by what she has already said to Parliament and her written evidence. She looks forward to answering any further questions at the committee when she appears in person."

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"The Scottish Government has not withheld relevant documents from the Parliament committee outwith its legal and other obligations. The Lord Advocate covered the issue of sisting the judicial review in his evidence to the committee on 17 November 2020."

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Background

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The Lord Advocate's committee evidence is available here: [Official Report \(parliament.scot\)](#)

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Sunday Post

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I understand that Alex Salmond's submission to the harassment committee claims that the Lord Advocate and other legal advisers in September 2018 were actively considering sisting (postponing) a court showdown with him and that dozens of documents showing this information have been deliberately withheld from the parliamentary committee.

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A source close to Alex Salmond has said: "The Government's cunning plan was to talk it out of court and these hidden documents about sisting get to the roots of the scandal. That's why they are now under wraps."

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Would it be possible to get a comment on this please?

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Draft Line

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A Scottish Government spokesperson said:

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"The Lord Advocate covered the issue of sisting the judicial review in his evidence to the committee on 17 November 2020."

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Senior Media Manager

Scottish Government | St Andrew's House | Regent Road | Edinburgh | EH1 3DG |

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Office of the First Minister of Scotland

FirstMinister.gov.scot

Prìomh Mhinistear na h-Alba



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To: Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>, Henderson G (Gavin) <gavin.henderson@gov.scot>, Bruce A (Andrew) <andrew.bruce@gov.scot>, Troup C (Colin) (Dr) <colin.troup@gov.scot>, Legal Secretariat to the Lord Advocate <dlpcealsla@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, Rennick NS (Neil) <neil.rennick@gov.scot>, DG Organisational Development & Operations <dgodo@gov.scot>, Fraser L (Lesley) <lesley.fraser@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, Richards N (Nicola) <nicola.richards@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, Hynd JS (James) <james.hynd@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, French C (Craig) <craig.french@gov.scot>, Macniven R (Ruaraidh) <ruaraidh.macniven@gov.scot>, Solicitor to the Scottish Government <solicitor@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, Nicolson S (Stuart) Special Adviser <stuart.nicolson@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@transport.gov.uk>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, Veitch J (Jennifer) <jennifer.veitch@gov.scot>, Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>, Fraser L (Lesley) <lesley.fraser@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>, Solicitor to the Scottish Government <solicitor@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>

Date: Sat, 20 Feb 2021 18:11:36 +0000

Thanks [REDACTED]. I'll issue now.
Have a good evening.

~

[REDACTED]

~

~

From: [REDACTED] <[REDACTED]@gov.scot> On Behalf Of Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 20 February 2021 18:09
To: [REDACTED] <[REDACTED]@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>; Henderson G (Gavin) <Gavin.Henderson@gov.scot>; Bruce A (Andrew) <Andrew.Bruce@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; Richards N (Nicola) <Nicola.Richards@gov.scot>; Bruce MG (Maureen) <Maureen.Bruce@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; French C (Craig) <Craig.French@gov.scot>; Macniven R (Ruaraidh) <Ruaraidh.Macniven@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>

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Subject: RE: MEDIA QUERY FOR CLEARANCE - FFM - Mail on Sunday

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Hi [REDACTED]

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Kind Regards

[REDACTED]

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[REDACTED] Deputy Private Secretary to John Swinney MSP, Deputy First Minister and
Cabinet Secretary for Education and Skills | The Scottish Government | Web: www.gov.scot |

☎ [REDACTED] | Mobile: [REDACTED] | Email: DFMCSE@gov.scot |

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decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the
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2016. See www.lobbying.scot

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S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED]

<[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED]

[REDACTED] <[\[REDACTED\]@transport.gov.uk](mailto:[REDACTED]@transport.gov.uk)>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED]

[REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>; [REDACTED]

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A Scottish Government spokesperson said:

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"The First Minister stands by what she has already said to Parliament and her written evidence. She looks forward to answering any further questions at the committee when she appears in person."

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"The Scottish Government has not withheld relevant documents from the Parliament committee outwith its legal and other obligations. The Lord Advocate covered the issue of sisting the judicial review in his evidence to the committee on 17 November 2020."

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Background

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The Lord Advocate's committee evidence is available here: [Official Report \(parliament.scot\)](https://www.parliament.scot/Official-Report)

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I understand that Alex Salmond's submission to the harassment committee claims that the Lord Advocate and other legal advisers in September 2018 were actively considering sisting (postponing) a court showdown with him and that dozens of documents showing this information have been deliberately withheld from the parliamentary committee.

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A source close to Alex Salmond has said: "The Government's cunning plan was to talk it out of court and these hidden documents about sisting get to the roots of the scandal. That's why they are now under wraps."

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Background

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([parliament.scot](https://www.parliament.scot/Official-Reports))

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Senior Media Manager

Scottish Government | St Andrew’s House | Regent Road | Edinburgh | EH1 3DG |



Office of the First Minister of Scotland

FirstMinister.gov.scot

Prìomh Mhinistear na h-Alba



~

From: [REDACTED]
Sent: 20 March 2021 14:59
To: James Hamilton [REDACTED]
Subject: RE: Really Final Draft? [UNSCANNED]

Hi James,

Please see attached updated report. I have:

- addressed any remaining comments
- adjusted the date of the publication of the Dunlop report
- made some minor proofreading changes
- removed the weird highlighted bits

I have added a comment at the start about whether you would like each chapter to start on a new page- if so I can sort the page breaks on the final text.

I have attached an updated draft letter. This has been adjusted to reflect that the report includes a recommendation on Spads. I have also reworked the note on redaction/legal issues to try and avoid the note itself having to be redacted- you will see this makes it more convoluted but I have tried to find a form of words that can be published. I have also reworked the reasoning presented in some places to try and give more detail.

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 20 March 2021 13:06
To: [REDACTED] [REDACTED]@gov.scot>
Subject: Really Final Draft? [UNSCANNED]

Hi [REDACTED]

Further draft with new short Chapter on special advisers and revised recommendations.

There are a small number of outstanding comments.

Best wishes

James

For more information please visit <http://www.symanteccloud.com>

Draft 20 March further revised by JH and [REDACTED]

Report of the Independent Adviser on the Scottish Ministerial Code into the self-referral by the First Minister Ms Nicola Sturgeon into allegations that she breached the Code in respect of meetings and discussions with the former First Minister Mr Alex Salmond between 29 March 2018 and 18 July 2018 and related matters

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- 5. When did the First Minister become aware that there were allegations against Mr Salmond?**
- 6. The meeting on 29 March 2018**
- 7. The First Minister's failure to refer to the meeting of 29 March in her statement to the Scottish Parliament on 8 January 2019**
- 8. The meeting of 2 April 2018**
- 9. The telephone call of 23 April**
- 10. The decision to inform the Permanent Secretary**
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The Remit for the Investigation

The remit for the investigation

The remit for the self-referral to me by the First Minister under the Scottish Ministerial Code was set out as follows by the Deputy First Minister, Mr John Swinney, in a reply to a parliamentary question in the Scottish Parliament on 3 August 2020.

“It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament

2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon’s home.

23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.

14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon’s home.

18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It is has been (sic) further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers (“the Procedure”).

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister’s confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

Review any relevant documentation relating to the meetings and discussions listed above.

Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.

Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.

Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.

Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:

- i. whether the Ministerial Code is engaged regarding the meetings and discussions;
- ii. whether there has been any breach of the Code and the nature of any such breach; and
- iii. if a breach has occurred, advice on the appropriate remedy or sanction.

The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.”

In accordance with the remit I sought and received written observations from persons who included the following: the First Minister, Ms Nicola Sturgeon; the former First Minister, Mr Alex Salmond; the Permanent Secretary to the Scottish Government, Ms Leslie Evans; Ms Liz Lloyd, Chief of Staff to the First Minister; Mr Geoffrey Aberdeen, formerly Chief of Staff to the former First Minister; Mr Duncan Hamilton, Mr Kevin Pringle, Mr David Clegg, Mr Stuart Nicholson, Mrs Lorraine Kay and Mr Peter Murrell. All of these witnesses gave me full co-operation and answered follow-up questions where necessary although I had no power to compel any person to cooperate with the investigation. I carried out follow-up interviews with a number of the witnesses where I considered clarifications were required.

Report and Findings

1. Brief summary of the factual background

1.1. The principal factual background to the questions raised in the remit is as follows:

Mr Alex Salmond resigned as First Minister of Scotland on 18 November 2014 and was succeeded as First Minister the following day by Nicola Sturgeon.

1.2. In December 2017 the Scottish Government adopted a new procedure entitled “Handling of harassment complaints involving current or former ministers” (subsequently referred to in this report as the Procedure) which is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

1.3. By a letter dated 7 March 2018 Mr Alex Salmond was informed that an internal investigation had been commenced under the Procedure on 17 January 2018 in respect of two formal complaints made by civil servants about his behaviour during his time as First Minister¹.

1.4. [REDACTED] Mr Geoffrey Aberdeen, former Chief of Staff to Mr Salmond, met [REDACTED]. Mr Aberdeen says that the [REDACTED] informed him that two complaints had been made against Mr Salmond and named one of the complainers. [REDACTED] disputes this. Having discussed the matter with other persons Mr Aberdeen decided to inform Mr Salmond of what he had been told and did so by telephone later that week. By that time Mr Salmond had already received the letter of 7 March informing him that complaints had been made.

1.5. On 29 March 2018 there was a meeting between the First Minister, [REDACTED] and Mr Aberdeen, which took place in the First Minister’s office in the Scottish Parliament.

1.6. There then followed a series of meetings and telephone conversations between the First Minister and Mr Salmond.

¹ [SP_SGHHC - FN29.pdf \(parliament.scot\)](#)- page 10

1.7. The first of these meetings took place in the evening of 2 April 2018 at the First Minister's home. Mr Aberdein and [REDACTED] were present as well as Mr Duncan Hamilton who was acting as a legal adviser to Mr Salmond.

1.8. On 23 April 2018 there was a telephone conversation between the First Minister and Mr Salmond.

1.9. On 23 April 2018 there was a second telephone conversation between the First Minister and Mr Salmond.

1.10. On 7 June 2018 there was a second meeting between the First Minister and Mr Salmond during the Scottish National Party Conference which took place in Aberdeen.

1.11. On 14 July 2018 there was a third meeting between the First Minister and Mr Salmond which took place at the First Minister's home.

1.12. On 18 July 2018 there was a third and final telephone conversation between the First Minister and Mr Salmond.

2. The adoption of the Procedure for handling complaints against Ministers and former Ministers

2.1. In December 2017 the Scottish Government adopted a procedure entitled "Handling of harassment complaints involving current or former ministers." It is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet" and will be referred to as "the Procedure" in this report. Since 23 August 2018 the Procedure is also published on the Scottish Government's website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

2.2. The Procedure was adopted following a process of consultation involving the First Minister, the Scottish Cabinet, the Permanent Secretary and other senior officials of Scottish Government, the Chief of Staff, the Scottish Parliament, the Scottish Government's People Directorate, as well as the Scottish Government Legal Directorate. The draft was also shared with the Cabinet Office of the United Kingdom Government and the Scottish Government Trade Unions. The process of developing this policy and the consultations involved are described in a document entitled *Response to Committee of the Scottish Government Handling of Harassment Complaints* (the Response Document) dated June 2020 prepared in response to a request from the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints.²

² Response to Committee of the Scottish Government Handling of Harassment Complaints (Response Document) see: [SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf](https://www.gov.scot/publications/SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf) (www.gov.scot)

2.3. The Response Document includes the following explanations of the motive behind the policy review:-

Tackling bullying and harassment, and ensuring that the Scottish Government is a more diverse and inclusive organisation, sits at the heart of the Scottish Government's organisational strategy, as it did at the time covered by this statement...

The 2016 People Survey³ continued to show that a significant minority of staff (10%) said they had experienced bullying or harassment, but combined with the very low number of formal complaints raised⁴, this suggested a possible lack of awareness of or confidence in existing processes and procedures. This led to the appointment in spring 2017 of a Director to champion work to tackle bullying and harassment within the organisation. The focus at that time was understanding and addressing the cultures that can allow bullying and harassment to occur and to raise awareness about the drivers for positive and inclusive cultures across the organisation.⁵

A wider societal focus on sexual harassment and sexual abuse had been increasing at the same time, and in early October 2017 reactions to sexual abuse allegations against Harvey Weinstein brought widespread exposure to the #Me Too movement, which was seeking to tackle sexual harassment and abuse by making the scale of the problem clear. A number of allegations of sexual harassment and assault were also reported in Westminster and the Scottish Parliament during October and November 2017. These issues were a matter of considerable concern across Government and the Parliament, as well as among individual MSPs, and the public at large.⁶

2.4. The review process identified a gap in the then existing procedure of dealing with sexual harassment claims, that is, that there was no mechanism for dealing with historic claims against former Ministers. This gap is described in the Response Document as follows:-

19. The review process in 2017 identified that while options were available to consider potential sexual harassment complaints about serving Ministers, no such option was available in respect of former Ministers. Those involved in the review process identified that there was a gap in the coverage in terms of having a procedure that could be deployed should any historical complaints arise in Scotland. It was recognised that a number of the allegations that had emerged at Westminster related to the actions of former Ministers during their time in office.

³ Scottish Government People Survey 2005 to 2018 - gov.scot (www.gov.scot)

⁴ <https://www.gov.scot/publications/foi-17-02235/>

⁵ Response to Committee of the Scottish Government Handling of Harassment Complaints, SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf (www.gov.scot) paragraph 4.

⁶ Ibid., paragraph 5

20. On 4 November 2017, during this review process, a Scottish Government Minister resigned his Ministerial post, following allegations made from outside the Scottish Government about his personal conduct. This example reinforced for the Scottish Government the importance of making sure that it had policies and procedures in place which were capable of responding appropriately to such allegations should they arise within the Scottish Government.

21. Following the identification of that gap in the overall framework, work was put in hand to determine the most effective way to fill it...As a result, Scottish Government officials began work on the development of a new procedure that could be applied in respect of former Ministers. The first version of the procedure was created on 7 November, which was the beginning of an iterative and collaborative drafting process. In the course of the drafting of that procedure it was decided to broaden its scope to also include serving Ministers⁷ so that there would be a single procedure that could be applied in respect of harassment complaints involving Ministers, whether current or former. This was also consistent with existing plans to review Fairness at Work. Later, following a view from the First Minister and Permanent Secretary, the procedure was amended to cover all forms of harassment, not just sexual harassment.⁸

2.5. It appears that its drafters did not consider that there might be any legal obstacle to applying the Procedure, designed and described as an internal Scottish Government procedure, to former Ministers who were no longer in a contractual or statutory relationship with Scottish Government and in respect of whom the previously existing harassment complaints procedure had already expired at the time of their retirement. I have not seen any legal advice which may have been provided to Scottish Government at the time but we do know that according to the Response Document the Scottish Government's lawyers were consulted as part of the approval process of the Procedure. The Procedure did not cover historic claims against former civil servants.

2.6. However, when complaints were laid against the former First Minister, Mr Alex Salmond, he disputed the right of Scottish Government to apply the Procedure to him and ultimately sought a judicial review against it. Among the objections which he raised to the Procedure was the claim that he could not, as a former office-holder, legitimately have been made amenable to a disciplinary procedure which had been introduced as an administrative act without any statutory or other legal basis. He challenged the retrospective effect of the Procedure. Mr Salmond also alleged procedural unfairness in the operation of the Procedure. These issues are further addressed in Chapter 13 in which I discuss Mr Salmond's claim that the manner in which Scottish

⁷ [SP+SGHHC1+XX001+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)

⁸ [SP+SGHHC1+YY044+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)

Government defended the case which he brought amounted to a breach of the Ministerial Code on the part of the First Minister.

2.7. It is not necessary for the purposes of my remit for me to express a view on the merits of any of Mr Salmond's claims. These were matters of Scottish law which ultimately only the Scottish courts could have decided and to an extent did decide.

2.8. So far as concerns the future of the complaints procedure in respect of former Ministers and any amendments that may be required or thought desirable in the light of the failed disciplinary proceedings against Mr Salmond a separate enquiry led by Ms Laura Dunlop QC has prepared a report which was published on 16 March 2021.

2.9. Any questions concerning any political responsibility for the events which occurred in relation to the adoption of the Procedure are matters for the Scottish Parliament and I do not express any opinion on these.

2.10. My brief is to enquire into whether the First Minister was in breach of the Ministerial Code. It has been made clear that in this I am not confined to the specific question of whether paragraphs 4.22 and 4.23 of the Code were breached but am expected to enquire whether any breach of the Code has been committed by the First Minister regarding her meetings and discussions with Mr Salmond between 29 March 2018 and 18 July 2018.

2.11. I am not aware of anything in the conduct of the First Minister in respect of the introduction of or her observance of the Procedure which could be considered to be a breach of the Code. The Response Document has set out the reasons for the introduction of the Procedure. In my opinion those reasons demonstrated a proper concern for the objective of strengthening the procedures for dealing with cases of harassment and bullying, especially sexual harassment, and it was perfectly proper and appropriate for the First Minister to lead this process and to give it every support possible. The process was supported by advice from the most senior Scottish Government officials, including the legal directorate, as well as experts in the area of human resources and the handling of complaints. In my opinion the First Minister was entitled to rely on the advice she received. If there was any error in that advice- and I offer no opinion on that question- she cannot be regarded as personally in breach of the Ministerial Code because she relied on advice which was not correct. I accept the First Minister's evidence that at the time the Procedure was adopted she was not aware of any complaints or impending complaints against Mr Salmond. It is not part of my remit to examine the administrative arrangements for the introduction of the Procedure and I make no comment about these.

2.12. A key principle in the Procedure is to avoid any risk of political interference in complaints and in particular to exclude the First Minister from any involvement in a complaint against a former Minister. In my opinion this is a legitimate and a proportionate objective of the Procedure.

2.13. As a result of this provision the First Minister excluded herself from being informed of or involved in dealing with any complaints against former Ministers as a result of which she was not informed of the two complaints against Mr Salmond. In my opinion she was justified and acted properly in so excluding herself. Apart altogether from the provisions of the Procedure her long political association and personal friendship with Mr Salmond would have placed her in an invidious position and left herself open to accusations of bias and partiality had she allowed herself to become involved.

2.14. As already referred to above Mr Salmond has made a number of very serious allegations about the manner in which the complaints were investigated and dealt with including accusations of serious impropriety. I make no findings about the truth of any of these allegations which are the subject of enquiries by the Committee on the Scottish Government Handling of Harassment Complaints of the Scottish Parliament. I accept the evidence of the First Minister that she had no involvement in these matters. I do not consider that at present the First Minister has any responsibility under the Ministerial Code for any shortcomings or wrongdoing in the behaviour of other persons, if there were any such shortcomings or wrongdoing, in relation to matters from which she has properly excluded herself from any involvement. Later in this report I raise the question whether Ministers should bear responsibility for the activities of their special advisers.

3. The operation of the Procedure

3.1. The Procedure envisages a number of options for Scottish Government employees claiming to be victims of harassment by serving or former Ministers. "An individual may choose to raise an issue involving a current or former Minister through a number of mechanisms. These may include a senior manager of your choosing, direct to HR or a Trade Union representative." (Paragraph 1). Options available to the staff member include asking that their concern is acknowledged but without further action being taken, or indicating that they wish to make a formal complaint (Paragraph 2). It is emphasised that at all times the staff member or the Scottish Government itself is free to make a complaint directly to the police Paragraphs 2.1, 18 and 19.

3.2. In the event that a formal complaint of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the Investigating Officer to deal with the complaint. That person will have had no prior involvement with any aspect of the matter being raised. Crucially in relation to the complaints against Mr Salmond it was the failure to observe this provision which led to the success of his petition for judicial review. The role of the Investigating Officer will be to undertake an impartial collection of facts, from,(sic) the member of staff and any witnesses, and to prepare a report for the Permanent Secretary. The report will also be shared with the staff member. (Paragraph 10).

3.3. If the Permanent Secretary considers that the report gives cause for concern over the former Minister's behaviour towards current or former civil

servants the former Minister should be provided with details of the complaint and given an opportunity to respond. The former Minister will be invited to provide a statement setting out their recollection of events to add to the record. They may also request that statements are taken from other witnesses. If additional statements are collected the senior officer will revise their report to include this information and submit this to the Permanent Secretary and share with the staff member. The Permanent Secretary will consider the revised report and decide whether the complaint is well-founded. The outcome of the investigation will be recorded within the SG. The Permanent Secretary will also determine whether any further action is required; including action to ensure lessons are learnt for the future.(Paragraph 11).

3.4. For complaints involving a former Minister who is a member of the Party of the current Administration, the Permanent Secretary will inform the First Minister both in this capacity and in the capacity of Party Leader, of the outcome when the investigation is complete. The First Minister will wish to take steps to review practice to ensure the highest standards of behaviour within the current Administration (Paragraph 12).

3.5. The Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and how a complaint is dealt with, and to ensure the impartiality of the process. In my opinion this is a legitimate objective of the scheme.

3.6. Chapter 13 below deals in more detail with certain aspects of how the procedure was adopted and its operation in relation to Mr Salmond.

4. Meetings between [REDACTED] and the former Chief of Staff [REDACTED]

4.1. There were meetings on 6 March and 9 March 2018 between [REDACTED] and Mr Geoffrey Aberdein. He had been Chief of Staff (the most senior special adviser) from 2011 to December 2014 during Mr Salmond's time as First Minister and had left government service when Mr Salmond resigned as First Minister following the SNP's defeat in the independence referendum. [REDACTED]

4.2. [REDACTED]

4.3. [REDACTED]

4.4. [REDACTED]

[REDACTED] In the light of the “me too” movement, the increased focus on issues of harassment and in particular historic harassment, and the creation of a new procedure in government to address such issues, [REDACTED] if there was anything of that nature, from his time as Chief of Staff, [REDACTED]

4.5. [REDACTED] had remarked the previous week that the content of an official briefing provided for First Minister’s Questions on the issue of sexual harassment had changed. Where the briefing had previously given a clear answer of “No” to the question of whether there had been any complaints about current or former ministers, and had stated that fewer than five cases of sexual harassment had been reported in the civil service, the colleague had noticed that both of those statements had been removed, and a line about concerns having been raised and being considered in line with procedures was now the line that should be used. That line could have referred to either staff or ministers and did not state that an investigation was underway into a former minister in general or into Alex Salmond in particular.

4.6. [REDACTED] admits to having been aware at that time of growing rumours about Mr Salmond but claims at that stage not to have been aware of actual complaints made against him. [REDACTED]

4.7. Whilst discussing “me too” in general, [REDACTED] described asking Mr Aberdeen whether he was aware of anything of concern. [REDACTED] said Mr Aberdeen had no knowledge in relation to any other minister or former minister, but referred in general terms to two alleged incidents involving Mr Salmond. One was not sexual in nature.

4.8. In relation to the incident that was sexual in nature [REDACTED] gave a general description of the incident which he presented as being in his view a minor incident [REDACTED]. She says that he named the person concerned and that he did not seem to think it was a particularly significant incident. [REDACTED]

4.9. The conversation about “me too” also covered a 13 November 2017 allegation on Sky News that female staff at Edinburgh airport had expressed concern to airport managers about what they regarded as “inappropriate

behaviour” which was not specified in the Sky News report. Mr Salmond was reported as “strongly denying” any wrongdoing and nothing more was ever heard of this matter. The alleged Edinburgh Airport incident is further discussed in Chapter 5 below. [REDACTED] also referred to “jungle drums” in the media about Mr Salmond ever since the “me too” movement became prominent in October 2017. A number of [REDACTED] had apparently been approached on a number of occasions by reporters to ask if there had ever been complaints about ministers in general and Mr Salmond in particular.

4.10. According to [REDACTED] account her predecessor suggested that Mr Salmond would not cope well with such allegations, but said he wasn’t aware of anything further, and that he and Mr Salmond weren’t really in touch that much anymore and there was no other discussion on the issue.

4.11. Mr Aberdeen in his account makes no mention of discussing any of these matters [REDACTED]. He states that any reference to Alex Salmond in that first discussion was in the context of media coverage, particularly concerning Alex Salmond's decision to host a show on Russian television around that time which was the subject of much controversy. It is agreed by both participants that this subject was indeed discussed at this meeting.

4.12. Mr Aberdeen, however, believes that the main purpose of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.13. [REDACTED]
[REDACTED]
[REDACTED]

4.14. [REDACTED] says that this resulted from her increasing concerns that whether or not there was currently any investigation into Mr Salmond, it was possible there could be an investigation in the future as it was clear there could be something to investigate. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.15. [REDACTED] claims that in order [REDACTED] [REDACTED] indicated that [REDACTED] had a reason to believe there might be a complaint and it could be about Mr Salmond. [REDACTED] says that this was

an overstatement [REDACTED]

[REDACTED] says that Mr Aberdeen took this to mean that someone within government had given [REDACTED] information about a complaint and began to name individuals who might have done so. He suggested that he would phone some contacts who had previously worked with him who would tell him if there was a complaint. [REDACTED] then denied knowing if there was a complaint and advised against making such calls as it seemed highly improper. If this is indeed what happened it would be hardly surprising that Mr Aberdeen misunderstood what [REDACTED] was saying.

4.16. Mr Aberdeen has a very different recollection of this meeting. He states that it is his clear recollection that [REDACTED] informed him that the Scottish Government had received official complaints about Mr Salmond. He says that [REDACTED] denied knowing the full details of the complaints but did tell him there were two individual complainers and named one of them. [REDACTED]

4.17. If it were a simple matter of comparing the two accounts it would not be possible to be completely certain whose account is correct, although Mr Aberdeen's account is more straightforward than the rather complicated account given by [REDACTED]. It is difficult to see how there can have been a misunderstanding as to what was actually said despite [REDACTED] elaborate explanation of how Mr Aberdeen could have misunderstood what [REDACTED] said.

4.18. However, whether it is the case that [REDACTED]

[REDACTED]

There is no evidence to suggest that the First Minister was aware of Mr Aberdeen's version of events before the end of March. If Mr Aberdeen's account is correct I think it quite likely in any event that [REDACTED]

4.19. [REDACTED]

[REDACTED] would undoubtedly have been well aware that under the Procedure harassment complaints were required to be treated in confidence and the First Minister was required not to be involved in any way in dealing with such complaints. It seems to me unlikely that the First Minister would have welcomed being

potentially compromised by having rumour or gossip about such a complaint

[REDACTED]

4.20. Mr Aberdein states that it was [REDACTED]

[REDACTED]

Furthermore, the information which Mr Aberdein later gave Mr Salmond turned out in fact to be correct.

4.21. The same day Mr Aberdein telephoned a former civil servant with whom he was friendly to tell her what had happened. She has made a statement confirming this. Later that day Mr Aberdein contacted Mr Kevin Pringle and Mr Duncan Hamilton by telephone to inform them of what he had been told about the complaints and to seek their advice about what he should do. They advised him to tell Mr Salmond. Mr Pringle has confirmed this account of what happened. Mr Hamilton initially declined to make a statement to me in view of his professional relationship with Mr Salmond but subsequently made a statement confirming Mr Aberdein's statement when released from his obligation of confidentiality by Mr Salmond. On 9 March and again on 11 March Mr Aberdein informed Mr Salmond by telephone of what [REDACTED] had told him. In view of the fact that Mr Aberdein informed these four individuals of the conversation promptly I believe that Mr Aberdein's account of what was said by [REDACTED] the existence of complaints and the identity of a complainer is credible.

4.21. In the absence of any evidence that [REDACTED] the First Minister about either the existence or the contents of the complaints, then the discussions between Mr Aberdein and [REDACTED] do not in my opinion constitute any breach of the Ministerial Code by the First Minister.

[REDACTED]

It remains the fact that the name which Mr Aberdein says was given to him was in fact the name of one of the complainers against Mr Salmond.

[REDACTED]

5. When did the First Minister become aware that there were allegations against Mr Salmond?

5.1. The First Minister had been aware of the report on Sky News on 13 November 2017 referred to in paragraph 4.9 above. The report led to her having a "lingering concern" about Mr Salmond. She described it in an interview with me in the following terms:

Round about the beginning of November 2017, just to put you in the picture, as you will recall this was at the time the whole world really was talking about the “me too” allegations, and, you know, organisations, governments, parliaments everywhere were trying to make sure they had the right processes in place. And this was around about the time we got a query from Sky News. By “we” I mean the SNP, not the Scottish Government, and that was about allegations that had been made by people at Edinburgh airport about conduct on the part of Alex Salmond.

At that point I spoke to Mr Salmond about it. You know as far as I was aware at that point we were about to see a story appear on Sky News. I spoke to him the morning after we got the press query. He seemed pretty shaken by it at that point and said he had to get to the bottom of what it was. I spoke to him again later that day when he appeared much more bullish. But the following day the Permanent Secretary had indicated to me that he had been, or his lawyers, or a bit of both, I’m not sure, had been contacting people in the Scottish Government effectively asking people that he had worked with or that might have been with him going through Edinburgh Airport to back him up and that that has caused a bit of, some disquiet on the part of those people who had been contacted. And she asked me to ask him to stop that, which I did, and he said he already had all the information he needed. So I suppose the two things that just left me with a lingering concern was the fact that- and I struggle really to go beyond what I’m about to say to you- that his contacting people in the Scottish Government had appeared to almost stir something, a hornet’s nest had been stirred kind of thing. That was the impression I got. And then he said something to me about, you know, you can’t have stories like this running because you get one and the flood gates will open kind of thing, which he immediately qualified and said “oh no, that’s not to say that I think there is anything there”. But it was just the combination of things left me with a “is there something that is about to come forward about Mr Salmond’s behaviour?” It wasn’t something I thought about every day, or worried me everyday, but it was there in the back of my mind, and that I suppose is the back drop to what unfolded at a later stage.

5.2. Nothing more seems to have been reported about the Edinburgh Airport incident subsequently. As already discussed the First Minister says she first became aware of the fact that complaints against Mr Salmond under the Procedure had been made at the meeting on 2 April discussed below. Mr Aberdeen believes he told the First Minister of the existence of complaints on 29 March; he did not have details of these complaints at that time. (See paragraph 6.10 below).

6. The meeting on 29 March 2018

6.1. Sometime following a call to Mr Salmond early in March Mr Salmond intimated to Mr Aberdein that he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. Mr Aberdein cannot be precisely certain when and how this was arranged but believes he [REDACTED] through a phone call.

6.2. Thereafter, he believes he may [REDACTED]

6.3. Mr Salmond's account of how the first meeting came about is that he was contacted by phone on or around 9 March 2018 and again the following week by his former Chief of Staff. The purpose of the contact was to tell Mr Salmond [REDACTED]

6.4. Mr Aberdein said that at [REDACTED] had informed him of two complaints concerning Mr Salmond under a new complaints process introduced to include former Ministers and named one of the complainers to him. At that stage [REDACTED]

6.5. On receipt of the letter from the Permanent Secretary first informing Mr Salmond of complaints on 7 March 2018 he had secured Levy and McRae as his solicitors and Duncan Hamilton, Advocate and Ronnie Clancy QC as his counsel.

6.6. Mr Salmond and his legal advisers then identified what they considered to be a range of serious deficiencies in the Procedure. There was no public or parliamentary record of it ever having been adopted. In addition they believed that it contained many elements of procedural unfairness and substantive illegality. In their opinion there was an obvious and immediate question over the extent to which the Scottish Government even had jurisdiction to consider the complaints. In relation to former Ministers (in contrast to current Ministers) the Procedure offered no opportunity for mediation. The previous complaints procedure with which Mr Salmond had been familiar ('Fairness at Work') was based on the legislative foundation of the Ministerial Code in which the First Minister was the final decision maker. He wished to bring all of these matters to the attention of the First Minister. He did not know at that stage the degree of knowledge and involvement in the policy on the part of [REDACTED] the First Minister [REDACTED].

6.7. [REDACTED]

[REDACTED]

6.8. On 29 March 2018 there was a meeting between the First Minister and Geoff Aberdein, former Chief of Staff to Mr Salmond, which took place in the First Minister's office in the Scottish Parliament. [REDACTED]

[REDACTED]

6.9 The First Minister described in an interview the circumstances in which the meeting was held. She thought the meeting was arranged on the evening of 28 March or possibly the morning of 29 March. Her Chief of Staff told her that there had been conversations with Geoff Aberdein in early March. Mr Aberdein had recently made contact to ask if the First Minister would agree to see Mr Salmond because there was an issue he wanted to talk to her about and he was in a state of great distress. [REDACTED] said Mr Aberdein might be in the Parliament on 29 March. The First Minister appears to have been told that a civil servant colleague, somebody that Mr Aberdein had worked closely with was having a birthday celebration in the office and Mr Aberdein might be attending and if so he might try to grab a word with her. In fact Mr Aberdein did attend the Parliament that day.

JH: and then was he brought into your office? Was this just a discussion in the corridor so to speak?

FM: No no, we had been outside, just I don't expect you to visualise my office in Parliament but there is you know outside my office is where civil servants, special advisors work, so the member of staff whose birthday it was, civil servant, incidentally, we were outside there doing the birthday cake, singing happy birthday and Geoff had asked for a word and we went in to my office. Again, just to be clear, that would not have been the first time since Geoff had left as [REDACTED], after I became First Minister that he had been in the office for something and had stepped in to my room for a chat. We were friends, you know, we are friends. And so he stepped into my room. From memory, I don't think was a particularly long conversation but it took place in my office.

JH: And did he give you any details at that stage about what it was about?

FM: Not, and this is where, so a combination of what I remember about this meeting and then what actually happened at my house on 2 April which we will come on to, make me very firm to the best of my recollection. Remember, this 29 March meeting had never been a significant event in my mind. To the best of my recollection no he did not give me details, it was very much he wanted to get me to agree to see to see Alec. Alec and I were very close but we hadn't been speaking as much as normal, you know I was First Minister, he was off doing other things, he had lost his seat. He wanted me to see Alec and agree to a meeting. He was telling me that he was very worried about Alec, a lot of the discussion was about Alec's state of mind. You know he seemed to be indicating that he had never heard Alec be quite so upset about anything

previously, that he was very distressed, that he thought he might be about to resign his SNP membership because of the nature of the issue he was upset about. I do believe that I, partly down to what he was telling me, partly down to the Sky lingering concerns, that it was in the realms of a potential concern or complaint about sexual misconduct. But, you know in my mind, and this was not unusual; Alec and I have worked incredibly closely for a long time, if I was being told he wanted to tell me something, in my mind I would have had to see him and hear what he wanted to tell me. That's basically, I had a general sense that it was something serious, something in the realms of a sexual complaint potentially, and he was very upset about it but I agreed, we didn't set the date of the meeting with Alec at that point, that was [arranged] over the weekend. But I was very clear, I was agreeing to see Alec as a friend, I was being told he was in a state of considerable distress, but also as the leader of the SNP, I was being led to believe he was on verge of resigning his membership of the party.

6.10. Mr Aberdein agrees that the initiative for this meeting came from his making an approach on behalf of Mr Salmond. However, he is quite clear that he came to the Parliament on 29 March for the purpose of meeting the First Minister. He says he had not come in for the purpose of attending the birthday party of which he had been unaware in advance of his arrival in the Parliament. However, he did join the celebrations. The First Minister also briefly joined the party and they stepped into her office to discuss Mr Aberdein's concerns. The First Minister says that during the conversation he raised an incident allegedly involving Mr Salmond. It appears that this may have been the incident discussed by [REDACTED] and Mr Aberdein [REDACTED], concerning which it is disputed who said what to whom. The First Minister says that he spent most of the meeting seeking to persuade her to meet Mr Salmond. She does not believe the discussion took longer than ten minutes, though Mr Aberdein was in parliament for a longer period, socialising with former colleagues. Mr Aberdein says that he gave a brief account of the complaints against Mr Salmond to the First Minister. Contrary to what Mr Salmond told the Parliamentary Committee he did not give details of the conduct alleged to have been engaged in by Mr Salmond as he did not in fact know the details. He agrees the meeting was a short one lasting ten or fifteen minutes. The meeting on 2 April resulted from that short conversation.

6.11. I find it very hard to know what to make of this story about the birthday party. Mr Aberdein's account to me was very convincing. Equally the First Minister seemed both convinced by and convincing in her account. It may be

[REDACTED] It may simply have been [REDACTED]

[REDACTED] However, this is speculation and it would probably not be right to place too much significance on the matter.

7. The First Minister's failure to refer to the meeting of 29 March in her statement to the Scottish Parliament on 8 January 2019

7.1. On 8 January 2019 the First Minister made a statement to the Scottish Parliament concerning the Procedure for Handling Complaints Involving Current or Former Ministers following the conclusion of Mr Salmond's judicial review proceedings which the Scottish Government had withdrawn their opposition to⁹.

7.2. In the course of that statement she disclosed for the first time the series of meetings and telephone calls in which she had held discussions with Mr Salmond as follows:-

In the past, questions have also been raised about meetings that I had with Alex Salmond during the investigation, so I want to address that issue now. I met him on three occasions: on 2 April 2018 at my home in Glasgow; on 7 June 2018 in Aberdeen, ahead of the Scottish National Party conference; and on 14 July 2018, at my home. I also spoke to him on the telephone on 23 April and 18 July 2018. I have not spoken to Alex Salmond since 18 July. On 2 April, he informed me about the complaints against him, which—of course—in line with the procedure, the permanent secretary had not done. He set out his various concerns about the process. In the other contacts, he reiterated his concerns about the process and told me about proposals that he was making to the Scottish Government for mediation and arbitration. However, I was always clear that I had no role in the process. I did not seek to intervene in it at any stage—nor, indeed, did I feel under any pressure to do so.

7.3. The first and most obvious point to note is that this is technically an accurate list by the First Minister of the discussions she actually held with Mr Salmond. What has been suggested, however, is that the omission to refer to the meeting with Mr Aberdein on 29 March during her statement to the Scottish Parliament created an incomplete and therefore misleading account.

7.4. It is agreed by all concerned in the meeting of 29 March that Mr Aberdein's purpose was to persuade the First Minister that she should meet Mr Salmond and to agree the necessary arrangements if she decided to do so. Clearly Mr Aberdein was simply a go-between and any information which he could convey was at second hand and would be superseded by whatever Mr Salmond could say at first hand if a meeting took place. The 29 March meeting, according to all participants, took no more than 10 or 15 minutes.

7.5. The First Minister recalls that [REDACTED] the meeting of 29 March [REDACTED] and she understood that [REDACTED] the possibility of allegations emerging against Mr Salmond (see paragraph 6.9 above). This was around the same time that a former Scottish Government minister had resigned from the SNP over allegations against him, so such matters were topical. The First

⁹ [Official Report 8 Jan 2019 \(parliament.scot\)](https://www.parliament.scot/Official-Reports/2019/Official-Report-8-Jan-2019)

Minister understood that [REDACTED] Mr Aberdeen [REDACTED] to see if the First Minister would meet Mr Salmond, as there was a specific matter that he wanted to discuss with her. Mr Aberdeen was said to have indicated [REDACTED] that Mr Salmond was in a state of distress and considering standing down from the SNP. [REDACTED]

7.6. According to the First Minister's recollection at the 29 March meeting Mr Aberdeen was primarily seeking to persuade her to meet Mr Salmond. Her account of the meeting is set out at paragraph 6.9 above. She recalls that the discussion covered the fact that Alex Salmond wanted to see her urgently about a serious matter, and she thinks it did cover the suggestion that that matter might relate to allegations of a sexual nature. The impression she had at this time was that Mr Salmond was in a state of considerable distress, and that he might be considering resigning his party membership. However, while she suspected the nature of what he wanted to tell her, it was Alex Salmond himself who told her on 2 April that he was being investigated under the Procedure and also gave the detail of the complaints against him. Mr Aberdeen agrees that the meeting was a very brief one, lasting no longer than fifteen minutes. Mr Aberdeen says that he relayed to the First Minister a broad summary of the complaints as described to him by Mr Salmond. In describing what Mr Salmond had previously told him he refers to him in the course of a telephone call having "relayed to me, in very high level, a summary of the complaints." By "in high level" Mr Aberdeen meant "not in detail"- indeed he made it clear to me in discussion that he was not aware of the detail. It is clear that the information given by Mr Salmond to the First Minister on 2 April was much more detailed than that relayed by Mr Aberdeen on 29 March.

7.7. The First Minister says due to the nature of the information shared with her at the meeting of 2 April it was that meeting rather than the 29 March meeting with Mr Aberdeen that has always been significant in her mind. She thinks that the assumption in her mind at the time of the 29 March discussion was that any issues of alleged sexual conduct against Mr Salmond would be related to the alleged incident at Edinburgh Airport which had been raised by Sky News in the query made to the SNP in early November 2017 and which concerned allegations of misconduct on the part of Alex Salmond and are discussed at paragraphs 4.9 and 5.1 above. She spoke to Mr Salmond about the allegations at the time. He denied them and, as it happened, Sky did not subsequently run a story about it. Since the identity of the individuals making the allegations was not made known to the SNP and they did not approach the SNP directly, there was no further action that it would have been possible for the SNP to take. However, even though Mr Salmond assured her to the contrary, all of the circumstances surrounding this episode left the First Minister with a lingering concern that allegations about Mr Salmond could materialise at some stage.

7.8. [REDACTED] recalled a reference by Mr Aberdeen to an incident Mr Salmond had apologised for some time previously. However, this would have meant nothing to the First Minister as she had not been aware of any such

incident at the time. That reference, however, later made sense to the First Minister in the light of what Mr Salmond subsequently told her on 2 April.

7.9. Regarding her failure to recall the 29 March meeting when addressing the Scottish Parliament on 8 January 2019 the First Minister says that it is obviously not possible for anyone to be certain of the reasons for forgetting an event. She thinks the reason this meeting was not engraved in her mind (beyond the fact that it was an unscheduled meeting in the middle of a busy day) are as set out in paragraphs 7.4, 7.5, 7.6 and 7.7 above. She has expanded upon these comments as follows. Firstly, by the time she met with Mr Aberdeen, she already had what she described as a ‘lingering concern’ that allegations might emerge about Mr Salmond. This was as a result of the Sky media query in November 2017. In other words, the meeting was not the first time possible allegations about Mr Salmond had been raised with her. Had it been, her memory might have been more vivid. But the second, and in her opinion perhaps more relevant factor is that her meeting with Mr Salmond himself a few days later on 2 April was so significant. It was then that he told her the details of the actual complaints against him and his response to them. She thinks it is because this was such a shock to her that the earlier meeting was overwritten in her mind.

7.10. It is regrettable that the First Minister's statement on 8 January 2019 did not include a reference to the meeting with Mr Aberdeen on 29 March. In my opinion, however her explanation for why she did not recall this meeting when giving her account to Parliament, while inevitably likely to be greeted with suspicion, even scepticism by some, is not impossible. What tilts the balance towards accepting the First Minister's account for me is that I find it difficult to think of any convincing reason why if she had in fact recalled the meeting she would have deliberately concealed it while disclosing all the conversations she had had with Mr Salmond. Furthermore, given that the meeting was with Mr Aberdeen who was expected to report it back to Mr Salmond it would have been naive to think that the meeting would remain secret given the First Minister's poor relationship with Mr Salmond at that point.

7.11. Mr Salmond strongly disputes the First Minister's contention that she forgot the meeting¹⁰. He argues that:-

In her written submission to the Committee, the First Minister has subsequently admitted to that meeting on 29 March 2018, claiming to have previously ‘forgotten’ about it. That is, with respect, untenable. The pre-arranged meeting in the Scottish Parliament of 29 March 2018 was “forgotten” about because acknowledging it would have rendered ridiculous the claim made by the First Minister in Parliament that it had been believed that the meeting on 2 April was on SNP Party business (Official Report 8 & 10 January 2019) and thus held at her private residence. In reality all participants in that meeting were fully aware of what the meeting was about and why it had been arranged. The meeting took place with a shared understanding of the issues for discussion - the complaints made and the Scottish Government procedure

¹⁰ [Alex Salmond \(5\) \(further redactions 23.02.2021\).pdf \(parliament.scot\)](#)

which had been launched. The First Minister's claim that it was ever thought to be about anything other than the complaints made against me is wholly false.

The failure to account for the meeting on 29 March 2018 when making a statement to Parliament, and thereafter failing to correct that false representation is a further breach of the Ministerial Code. Further, the repeated representation to the Parliament of the meeting on 2 April 2018 as being a 'party' meeting because it proceeded in ignorance of the complaints is false and manifestly untrue. The meeting on 2 April 2018 was arranged as a direct consequence of the prior meeting about the complaints held in the Scottish Parliament on 29 March 2018.

34. The First Minister additionally informed Parliament (Official Report 10 January 2018) that 'I did not know how the Scottish Government was dealing with the complaint, I did not know how the Scottish Government intended to deal with the complaint and I did not make any effort to find out how the Scottish Government was dealing with the complaint or to intervene in how the Scottish Government was dealing with the complaint.'

I would contrast that position with the factual position at paragraphs 20 and 27 above. The First Minister's position on this is simply untrue. She did initially offer to intervene, in the presence of all those at the First Ministers house on 2 April 2018. Moreover, she did engage in following the process of the complaint and indeed reported the status of that process to me personally.

7.11. It is for the Scottish Parliament to decide whether they were in fact misled. Mr Salmond overstates the case when he refers to "the repeated representation to the Parliament of the meeting on 2 April 2018 as being a 'party' meeting". The Official Reports of the Scottish Parliament for 8, 10 and 17 January 2019 contain no such claim by the First Minister. She did deny that the meetings were Government meetings which she explained on the basis that she had no responsibility for operating the Government's harassment complaints procedure and indeed no knowledge of the complaints except for what Mr Salmond told her. She claims that she confined her role in these meetings to explaining that she could not and would not become involved in the matter. Mr Salmond claims that she agreed to intervene. The fact is that she did not intervene. Mr Salmond has also claimed that her failure to intervene to prevent what he saw as an illegal procedure was also a breach of the Ministerial Code.

7.12. The failure to disclose the meeting of 29 March with Mr Aberdeen to the Scottish Parliament on 8 January 2019, although the First Minister's statement was technically a correct statement of the occasions on which she had met Mr Salmond nonetheless resulted in an incomplete narrative of events. For the reasons stated above I accept that this omission was the result of a genuine failure of recollection and was not deliberate. That failure did not therefore in my opinion amount to a breach of the Ministerial Code.

8. The meeting of 2 April 2018

8.1. The following facts concerning the meeting of 2 April are not in dispute: the meeting took place in Ms Sturgeon's home in Glasgow. The meeting took place at Mr Salmond's request and with the First Minister's agreement. Present in the house were the First Minister, her Chief of Staff, Ms Lloyd, Mr Salmond, and Mr Aberdein. Mr Duncan Hamilton, an advocate retained on behalf of Mr Salmond, was also present; his attendance had not been notified to the First Minister in advance. Mr Peter Murrell, the husband of the First Minister and Chairman of the SNP arrived home while the meeting was still taking place but took no part in it.

8.2. The meeting was in two parts, a discussion between the First Minister and Mr Salmond on their own followed by a meeting at which all five persons were present. The first part of the meeting was in private because Mr Salmond initially asked to see the First Minister privately. No permanent civil servant was present at any part of the meeting. The meeting was a lengthy one; the First Minister estimates between one and two hours; Mr Aberdein describes the first part of the meeting at which only the First Minister and Mr Salmond were present as lengthy.

8.3. The First Minister has stated that at the meeting Mr Salmond told her that complaints against him were being investigated under the Procedure. At that meeting, he showed her a copy of the letter he had received informing him of the complaints. He shared the details of the complaints made against him under the Procedure with her and gave her his response to them.

8.4. Notwithstanding the suspicions she had harboured going into this meeting, the First Minister describes herself as shocked and upset by the reality of what she read. Mr Salmond gave her his reaction to the complaints. In the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again, and said that it was his intention to seek a process of mediation between himself and the complainers. It was also clear, contrary to what the First Minister had anticipated, that he did not intend to resign his party membership or do anything to make the matter public at that stage.

8.5. The First Minister states that as it was clear to her then that these were complaints under the Scottish Government's Procedure, she knew that she had no role in the matter and would not be made aware of it by the Permanent Secretary until any investigation concluded. She states that she was clear to Mr Salmond that she would not intervene.

8.6. The First Minister states that she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. The principal reason for this was the "lingering suspicion" she had formed following the alleged incident reported by Sky News on 13 November 2017 and referred to in paragraph 9.1. above. She says that her discussion with Mr Aberdein on 29 March 2018 may have contributed to her suspicion.

8.7. In answer to the question why, if she suspected the nature of what Mr Salmond wanted to speak to her about on 2 April, she nevertheless agreed to the meeting, she states that the reasons were both personal and political. She thought Mr Salmond might be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that the SNP would require to respond to. As Party Leader, she considered it important that she knew if this was in fact the case in order that she could prepare the party to deal with what would have been a significant issue. As to the personal aspect Mr Salmond has been closer to her than probably any other person outside her family for the previous 30 years, and she was being told he was very upset and wanted to see her personally.

8.8. Although I accept the First Minister's statement that her motivation for agreeing to the meeting was personal and political, and she may have sought to underscore this by hosting it in her private home with no permanent civil servant present and no expenditure of public money, it could not in my opinion be characterised as a party meeting. Members of political parties do not ordinarily attend party meetings accompanied by their lawyers, and when the First Minister's husband, who is chairman of the SNP, arrived home, he did not join the meeting. In fairness the First Minister did not seek to make any case to me that this was a party meeting.

8.9. The First Minister says that she took no action as a result of the meeting. Indeed this appears to be confirmed by Mr Salmond one of whose complaints is precisely that the First Minister failed to take the action he requested. In effect his request was to alter or to override the Government policy and procedure in respect of handling harassment cases which had been agreed in late 2017. It is difficult not to conclude, therefore, that an aspect of the meeting concerned this Government procedure, although of course this was a Government procedure from which the First Minister was excluded by its express terms as a result of the policy adopted in 2017 and she claims that her involvement was only to explain why she could not and would not become involved..

8.10. However, in his submission Mr Salmond strongly argues that the First Minister did in fact agree to intervene in the process to secure a mediation process to resolve the complaints. He claims that she gave an assurance to that effect on 2 April. His account is supported by his advocate, Mr Duncan Hamilton, who states that he has a clear recollection that the First Minister said that "If it comes to it I will intervene". Mr Aberdeen did not hear this statement made but he had absented himself from the room at one point and he points out that it could have been said in his absence.

8.11. The First Minister, in her written statement, says that she was clear to Mr Salmond that she would not intervene. When appearing before the enquiry in the Scottish Parliament in reply to a question from Mr Stuart McMillan as to why she said to Mr Salmond "I want to assist", which he took to mean that she would intervene to advocate for mediation in the first instance, she replied:-

I want to paint a picture—or rather, give people the context. I was sitting in my house. We are talking about 2 April, which was Easter Monday. The man whom I had worked with, been friends with and in my earlier years had looked up to so much had just told me something pretty shocking. My head was spinning and I was dealing with complicated emotions. When you are sitting with a friend who is saying, “I’m facing this terrible situation,” it is entirely possible that you say things like, “I’d love to help if I could”—people say that kind of thing. This was a human situation. We are talking about it now as a political scrutiny situation, which is absolutely proper, but in the moment, it was a human situation between two people who knew each other really well.

As I think that I have described to Andy Wightman, from the minute I saw the letter, I knew that it would not be appropriate for me to intervene. I was probably trying to soften that for him. From his accounts, maybe I softened that too much. In real time, I was also thinking, “Is there anything I have to do? Do I have to report this to anybody?” All of that was going through my head as we were having that discussion. However, I did not intervene because, for the reasons that I set out very vehemently to Margaret Mitchell, I did not think that that would have been appropriate for me to do¹¹.

In reply to a question from Mr Alex Cole-Hamilton the First Minister did not deny that she had made the statement attributed to her by Duncan Hamilton:-

I made clear to him [i.e. Mr Salmond] that I had no role in the process. He could see that himself, because, I think, he had a copy of the process. I think that I made it clear that I would not intervene. Given what he has said and what Duncan Hamilton has said, there is a question about whether, in discussing with him what he thought should happen, I made that clear enough. If Duncan Hamilton says that I said something like that, there is, in a sense, disputed evidence. However, when I look at the things that I am being accused of saying, they do not strike me as being, “Yeah, yeah, I’m going to intervene.” Rather, they are things like, “Well, I’ll help if it is appropriate or if it comes to it”—if it comes to what? I do not know. The permanent secretary has got to tell me. Under the procedure, the permanent secretary would not tell me until the end. It sounds as if I was not actually thinking of intervening. However, if Alex left there with the impression that I was, all that I can say is that that, clearly, was not the impression that I wanted to give him.

A crucial part in this is that I did not intervene. It has been put to me today that I should have intervened, but I did not. Whatever way I expressed myself and whatever discussions I took part in, I did not intervene in the process¹².

As the First Minister has repeatedly, and correctly, stated, she did not intervene. Indeed, her failure to intervene has been a constant source of

¹¹ [Official Report \(parliament.scot\)](#)- page 120

¹² [Official Report \(parliament.scot\)](#)- page 120

complaint from Mr Salmond who has even suggested that her failure to do so may itself have been unlawful as contrary to the Scotland Act (see his text message of 3 June referred to in paragraph 10.2 below). If Mr Salmond was entirely confident that he had in fact secured an unequivocal commitment from the First Minister to intervene one might have expected him to follow it up and to press home his advantage. In fact, however, the next communication between the First Minister and Mr Salmond did not occur until three weeks later.

9. The telephone call of 23 April

9.1. The First Minister has stated that after the meeting of 2 April it was not her intention to meet with or speak to Mr Salmond about the matter again. Mr Salmond sent her a message on 22 April with a request to speak to her by telephone. When he did so she again thought it possible that he was intending to respond in a way that would make the matter public. She explains that in her opinion it would have been very much in character for him to have made a bold public declaration about the complaints made against him in order to, as he would see it, 'take control of the story'. This could have been along the lines of 'I'm standing down from the SNP while I fight to clear my name' or even a partial *mea culpa* 'I've made mistakes, but I'm not guilty of what I am accused of'. Back then, this is what she assumed he would eventually do. As Party Leader, she was keen not to be blindsided by such a development, and she explains that is why she agreed to the call.

9.2. The First Minister spoke to Mr Salmond by telephone on 23 April (the substantive call took place early in the evening after a call in the morning had to be aborted due to a poor signal). Her Chief of Staff was in the room with her during this call but not on the line. The First Minister thinks the call lasted around 10 to 15 minutes in total. During the call Mr Salmond asked her to advise the Permanent Secretary that she knew of the investigation and to persuade the Permanent Secretary to accede to Mr Salmond's request for mediation. She says she told him emphatically that she would not do so. Mr Salmond says that he phoned the First Minister by arrangement on WhatsApp to say that a formal offer of mediation was being made via his solicitor to the Permanent Secretary that day.

9.3. Mr Salmond seems during the course of his discussions with the First Minister to have referred to mediation and arbitration in two distinct contexts. Initially he referred to possible mediation between himself and the complainers. At a later stage he was referring primarily to a possible process of arbitration concerning the issues which finally gave rise to his legal proceedings against the Scottish Government. However, the absence of a provision in the Procedure for mediation between the complainers and a former Minister accused of harassment was always a subject of complaint from him. The First Minister states that she was in any event clear that she would not become involved in making representations so from her point of view that distinction does not seem to have assumed any particular importance.

10. The decision to inform the Permanent Secretary

10.1. Mr Salmond sent a further message to the First Minister on 31 May seeking a further meeting. The First Minister states that she initially resisted this request. She says that she still thought it possible that Mr Salmond might 'go public', but the content of their telephone conversation on 23 April and the tenor of his text messages to her on 31 May and 1 June made her think this was unlikely at that stage. Therefore, her intention was to decline this meeting request. The text messages between them show him wishing to provide her with "material" and that she, without outrightly declining to meet, was finding reasons why a meeting was not convenient, which reasons may well have been perfectly genuine. In a text message on 1 June the First Minister wrote "I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken about why I think me intervening is not right thing to do. Happy to talk on what's app at some point over weekend." Mr Salmond describes this as the opposite of the assurance she gave on 2 April.

10.2. On 3 June Mr Salmond sent the following message:-

My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings

The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!).

If you want to discuss privately then I can come to you in the North East on Monday.]

10.3. The First Minister states that the tone and content of this message changed her view of the matter. She explains that the tone of it seemed almost to her intimidatory and the content made clear he was considering legal action. As a result, she decided to inform the Permanent Secretary. The

permanent Secretary confirms that she did so on 5 June following up with a letter on 6 June which is set out below.

10.4. The First Minister agreed to meet Mr Salmond and did so on 7 June. There is nothing in the tone of the messages arranging the meeting to indicate her change of opinion, but on the other hand, there was no reason why she would have disclosed this to Mr Salmond in advance of the meeting.

10.5. The First Minister states that her decision to inform the Permanent Secretary was not one she took lightly. Her earlier decision not to inform the Permanent Secretary of her knowledge, which she says had also not been taken lightly, had been intended to protect the integrity and confidentiality of the process.

10.6. The First Minister decided to make it known to Mr Salmond that she had informed the Permanent Secretary, and to make clear again that she would not intervene as he wanted her to. She indicated to the Permanent Secretary in her letter to her that she intended to have such a conversation with him. She states that she felt it important to do this, firstly, because in her opinion Mr Salmond can be persistent and will often interpret conversations or messages in a way that best suit his interests. She wanted to leave no room for misinterpretation. Also, she believed it highly likely that their paths would cross towards the end of that week at the SNP Conference. As it turned out, she thinks he did not attend. She considered that speaking to him in a planned way was better than having him try to 'corner' her in the course of the Conference.

10.7. The text of the First Minister's letter to the Permanent Secretary was as follows:-

Letter from FM to Permanent Secretary

STRICTLY PRIVATE & CONFIDENTIAL

6 June 2018

For the attention of the Permanent Secretary

On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct while First Minister and that the complaint relates to alleged conduct of a sexual nature.

It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.

The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.

I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.

[Redacted]

After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process.

However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion.

I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process.

Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

NICOLA STURGEON

10.8. I enquired of the Permanent Secretary, Ms Leslie Evans, concerning her actions and involvement in the matters covered by my remit. Her reply includes the following statements:-

You asked for a statement of my actions and involvement in the matters covered by your remit. In providing such a statement, I should make clear from the outset that, as a civil servant, all my actions – including those taken in relation to this matter – are undertaken on behalf of Ministers and in keeping with the Civil Service Code.

I was not aware at the time – nor have I been made aware since - of any attempt by the First Minister to bring any influence to bear on the Scottish Government's investigation of complaints against Mr Salmond under the Procedure for Handling Harassment Complaints against Current or Former Ministers. At all times, my engagement with the First Minister was in keeping with the respective roles set out for the First Minister and Permanent Secretary in the Procedure. Accordingly, I did not inform the First Minister that formal complaints had been made about Mr Salmond when they were received in January 2018. In line with the Procedure, I did inform the First Minister of the outcome of the investigation at a meeting on 22 August 2018 in her capacity as both First Minister and as Leader of the Party which the former Minister in question, Mr Salmond, had represented.

As I have set out in my response to your specific questions below, the First Minister wrote to me on 6 June 2018, following a discussion on 5 June 2018, informing me of contact that she had had with Mr Salmond. I replied to the First Minister on 7 June 2018 to acknowledge receipt of her letter and to note the information it contained. In addition, I also wrote to the First Minister towards the end of the investigation on 17 August 2018 to inform her I was seeking legal advice on next steps. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate. Accordingly, my communication with the First Minister on this issue was very limited during the period in which the investigation was in progress.

In line with the Procedure, Mr Salmond had a number of opportunities to contribute to the investigation. I address this further in my answers to your specific questions below.

The intentions that lay behind my actions at all times throughout this period were the need to follow the process set out in the Scottish Government's Procedure for Handling Harassment Complaints against Current or Former Ministers, in line with the Civil Service values of integrity, honesty, objectivity and impartiality. This was especially true in carrying out the responsibilities as Deciding Officer assigned to the Permanent Secretary under the Procedure. At

no time did I experience any attempt whatsoever by the First Minister – or anyone acting on behalf of the First Minister – to influence how I undertook that role, or the decisions I came to, either in terms of the process followed or the substance of the matter. Indeed, this point is made explicit in the First Minister's letter to me of 6 June 2018: (Here the Permanent Secretary quoted from the First Minister's letter set out above).

11. The meeting on 7 June

11.1. This meeting took place in Aberdeen on 7 June 2018. The First Minister says that her Chief of Staff was aware of the meeting but not present though she did interrupt to bring it to an end as the First Minister had other matters to attend to. At the meeting on 7 June, the First Minister says she advised Mr Salmond of the action she had taken and made clear again that she was not prepared to intervene in the process. He wanted to give her a document to take away which she believes was a legal opinion he had obtained. She declined to do so. He stated his intention to take legal action if necessary. She expressed it as her opinion that given the seriousness of the complaints against him he should consider addressing the substance of them. Mr Salmond's description of the meeting does not differ in substance from the First Minister's.

11.2. The First Minister later told the Permanent Secretary of this meeting, but says that they did not have any detailed discussion about it.

12. The meeting on 14 July and telephone conversation of 18 July

12.1. Mr Salmond sent the First Minister a further message on 5 July 2018. She did not respond to this message. The message is interesting in explaining Mr Salmond's view of arbitration and how he sought to persuade the First Minister of what he saw as its advantages for the Scottish Government. I quote the relevant part of the message:-

Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration.

The legality will have to be resolved either in private (in a confidential and binding arbitration) or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.

12.2. The next contact between Mr Salmond and the First Minister was on 13 July 2018, as a result of a message sent to Mr Salmond on WhatsApp saying the First Minister wanted to meet him, which led to their third and final meeting

being arranged for 14 July at her home. The First Minister states that by the time of the meeting on 14 July, she was again concerned that the matter might become public. She says that she always thought it possible, even likely, that this was the course Mr Salmond would ultimately take. Were he to take legal action, which she now knew he was considering, this could also put matters into the public domain. She was again anxious - as Party Leader and from the perspective of preparing the SNP for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

12.3. At that meeting, he told the First Minister he was asking the Scottish Government to agree a process of arbitration. For reasons that she says she did not understand then, and does not understand now, he believed she was blocking this. She told him that was not so as she had no involvement in the complaint process. She says that she suggested again that he should address the substance of the complaints rather than simply focusing on procedure. Although he indicated he would reflect on this, the First Minister believed that he was focused on his request for arbitration and seemed unwilling to accept that she would not put pressure on the Permanent Secretary to accede to it. However, she did tell the Permanent Secretary on 16 July that in relation to arbitration she (the Permanent Secretary) should “reach whatever decision [she] thought appropriate” (see paragraph 10.8 above and Paragraph 12.6 below). In this respect the First Minister indicated her neutrality on the issue, contrary to Mr Salmond’s belief that she expressed her opposition to arbitration.

12.4. Mr Salmond sent the First Minister further messages on 15 and 16 July 2018. The First Minister states that the message of 15 July is Mr Salmond’s interpretation of her saying that she was not involved in the decision. I quote:-

Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone’s satisfaction.

12.5. By this time, it was clear to the First Minister that her relationship with Mr Salmond was breaking down. In her opinion he was clearly upset and angry that she was not assisting him to achieve the outcome he wanted. The First Minister states that she was also upset with him. She says that the nature of the complaints against him and the account he had given her of one of them

had badly shaken her faith in him. She states, however, that in spite of that she did not want their relationship to break down completely. He had been her friend and colleague for 30 years.

12.6. The First Minister advised the Permanent Secretary on 16 July of her meeting with Mr Salmond on 14 July and made the Permanent Secretary aware of his belief that she was blocking arbitration. The First Minister made clear to the Permanent Secretary again that she had no view on the matter and the decision was for the Permanent Secretary alone. Given the risk of legal action, she says she did not want any suggestion that an opinion attributed to her, which she had not expressed, was influencing decisions she had no part in. She reiterated to the Permanent Secretary that she must reach whatever decisions she considered appropriate and that she, the First Minister, did not seek to influence her in any way. The First Minister also told her - she thinks it was on the First Minister's return from annual leave - that she had spoken to Mr Salmond on the phone on 18 July, but she says that did not discuss the details of that conversation.

12.7. The First Minister says that it was her wish to avoid her relationship with Mr Salmond from breaking down completely that prompted her telephone call to him on 18 July. She wanted to draw a line under their contact about the matter. She was also about to take a two day summer break and she did not want it interrupted by contact from him. However, she thinks she was also hoping to make him understand and accept why she could not and would not intervene.

12.8. Mr Salmond's account of this 18 July telephone call is that the First Minister phoned him at 13.05 to say that arbitration had been rejected and suggested that this was on the advice of the Law Officers. She urged him to submit a substantive rebuttal of the specific complaints against him, suggested that the general complaints already answered were of little consequence and would be dismissed, and then assured him that his submission would be judged fairly. She told him he would receive a letter from the Permanent Secretary offering him further time to submit such a rebuttal which duly arrived later that day. Mr Salmond says that as it turned out the rebuttal once submitted was given only cursory examination by the Investigating Officer in the course of a single day and that she had already submitted her final report to the Permanent Secretary. Mr Salmond's view is now that it was believed that his submission of a rebuttal would weaken the case for Judicial Review (his involvement in rebutting the substance of the complaints being seen to cure the procedural unfairness) and that the First Ministers phone call of 18 July 2018 and the Permanent Secretary's letter of the same date suggesting that it was in his "interests" to submit a substantive response was designed to achieve that.

12.9. Later on 18 July, Mr Salmond sent the First Minister a copy of a letter he had received from the Scottish Government. She did not respond to this message. He sent her a further message on 20 July 2018. Again, she did not respond. She has had no contact with Mr Salmond since.

13. The Procedure for handling complaints against Ministers and former Ministers and Mr Salmond's objections to it

13.1. As already mentioned in Chapter 2 above, in December 2017 the Scottish Government adopted the Procedure. Its full and formal title is "Handling of harassment complaints involving current or former ministers" and it is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>. The manner in which the Procedure is intended to operate are set out in Chapter 3 above.

13.2. As pointed out in Chapter 3 the Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and to ensure the impartiality of investigations. In my opinion this is a legitimate objective of the scheme.

13.3. So far as concerns the limitations on the First Minister's involvement in the Procedure in my opinion the principle of excluding any role for politicians in the resolution of complaints of harassment of public servants is not only a legitimate one but there is a strong case for maintaining it. It is appreciated that Mr Salmond and no doubt others do not share this view. Mr Salmond made a forceful case to the effect that the First Minister may intervene in the Procedure in his submission to me which I discuss below at paragraph 13.7.

13.4. In the event the Government accepted that the process of investigation in the case of the complaints made against Mr Salmond was flawed because of contact between the person who was appointed as investigating officer and the complainants both before and at the time their complaints were formally made. It is not part of my remit to examine how or why that happened or whether matters might have been handled differently except insofar as it is alleged that certain aspects of the conduct of the Government's defence to Mr Salmond's legal proceedings in themselves constituted a breach of the Ministerial Code. This aspect of the matter is dealt with in Chapter 14 below. I have, however, been asked in the remit "to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure." I am not asked in my remit to comment on whether the Procedure itself may require revision in the light of experience and it is not part of the function of the independent advisers on the Ministerial Code.

13.5. It is of course important to learn what lessons there are from the experience gained in dealing with the complaint against Mr Salmond. In his judicial review proceedings he raised a substantial number of complaints

about the procedures applied in his case apart from the issue conceded by the Government. In his submission to me he has repeated his view that there are serious deficiencies in the Procedure and has identified a number of them, including the absence of a mediation procedure in the case of complaints against former Ministers as well as the more fundamental question of how a non-statutory and non-contractual scheme could bind a former Minister who had already left office when the Procedure was introduced. It seems to me that a report on the question whether there have been breaches of the Ministerial Code is not the place to provide that answer. Since Mr Salmond's judicial review proceedings were conceded by the Scottish Government on one of the grounds argued there is no court decision on the merits of the various other legal grounds advanced in Mr Salmond's proceedings. It may be necessary, therefore, to examine each and every one of these issues with a view to deciding what, if any, amendments to the Procedure may be required in the light of this experience. In particular in my opinion the question of whether a relatively informal resolution procedure is appropriate at all and offers proper guarantees for the rights of all parties where the facts alleged in a complaint may also, if proved, amount to serious criminal conduct, is a matter which should receive further consideration.

13.6. A process of review of the Procedure by Ms Laura Dunlop QC was completed on 16 March 2021. Ultimately the question of whether there are legal deficiencies in the Procedure which need to be addressed is one for the Scottish Law Officers.

13.7. Mr Salmond in his submission to me, having expressed his concern about the terms of the remit of this enquiry, among other matters stated the following:

4. ...The reason for my concern is that the remit drawn up for Mr Hamilton focuses on whether the First Minister intervened in a civil service process. As I have pointed out to Mr Hamilton, I know of no provisions in the Ministerial Code which makes it improper for a First Minister to so intervene.

5. To the contrary, intervention by the First Minister in an apparently unlawful process (subsequently confirmed by the Court of Session) would not constitute a breach precisely because the First Minister is under a duty in clause 2.30 of the Ministerial Code to avoid such illegality on the part of the Government she leads.

6. Further, to suggest intervention was a breach would be to ignore and contradict the express reliance of the procedure on the position of the First Minister as the leader of the party to which the former minister was a member in order to administer some unspecified sanction.

13.8. It is certainly correct that there is nothing in the Ministerial Code which expressly prevents the First Minister from involving herself in any process of government. However, the procedures to be followed in an internal Scottish Government enquiry into allegations of harassment were set out in the Procedure which had been adopted and agreed by the Scottish Government

including the First Minister as recently as a few months before. While that Procedure had not been enacted into law, and it might therefore be argued that the Scottish Government could have revoked or overridden it, it could hardly be argued that the First Minister would have had any power unilaterally to do so. The Ministerial Code lays a major emphasis on the principle of collective cabinet responsibility which is as binding on the First Minister as on her ministerial colleagues.

13.9. Even had such a unilateral move by the First Minister been possible it would undoubtedly have been seen as a partisan and political interference in a process which was then underway, and as an interference of a nature which the Procedure was expressly designed to prevent. What is more the complainants had undoubtedly acted in the expectation that their complaints would be dealt with in accordance with the terms of the Procedure. What answer could have been made if these complainants in their turn had sought a judicial review of an attempt to overturn a process which was already underway? Such a U-turn would certainly have been both legally and politically impossible even had the First Minister wished to make it, which clearly she did not. One can only imagine the political reaction had the First Minister attempted to override a system expressly designed to deal with harassment complaints against former Ministers on the first occasion when it was used for this purpose. To have adopted a harassment Procedure after extensive consultation, and then to have altered it following a confidential arbitration process, as Mr Salmond was proposing, at a time when significant complaints against a former First Minister were actually under investigation, would undoubtedly have undermined public confidence in the processes of government to a much greater extent than in fact eventually happened as a result of Mr Salmond's successful judicial review.

13.10. Furthermore, to suggest that the First Minister not only could but should have intervened unilaterally to protect legality is to ignore the role of the Law Officers both under the Scotland Act and in the terms of the Ministerial Code. Paragraph 2.30 of the Code, having stated the overarching duty on Ministers to comply with the law goes on to state that it is part of the role of the Law Officers to ensure that the Government acts lawfully at all times.

13.11. It might be argued that a distinction could be drawn between an involvement in the Procedure to override the Permanent Secretary's decision as distinct from a possible involvement to insist on settling the litigation intended and subsequently in fact brought by Mr Salmond by agreeing to his demands for arbitration. In my opinion such a distinction would be wholly artificial. The First Minister acted in accordance with the spirit as well as the letter of the Procedure in declining to involve herself in questions concerning Mr Salmond's intended or actual litigation. The Procedure was one which the legal advisers to Scottish Government had been involved in drawing up. The services of the Scottish Law Officers, who under the Scotland Act 1998 are responsible for the provision of legal advice to Scottish Government, were at all times available to the First Minister and Scottish Government when the Procedure was being devised and to the Permanent Secretary when Mr Salmond's judicial review was being defended. Even on the assumption that

the Law Officers got it wrong it does not follow that the First Minister was in breach of the Ministerial Code in failing to take Mr Salmond's advice.

13.12. I do not, therefore, accept that the First Minister's decision to follow the terms of the Procedure and not to seek to avoid or amend it during the course of an ongoing investigation amounted to a breach of the Ministerial Code. In my opinion for the reasons stated in the preceding paragraphs Mr Salmond's submissions in this regard are misconceived.

14. The Handling of Mr Salmond's Judicial Review Proceedings and the Ministerial Code

14.1. Mr Salmond has raised a further matter which he says constitutes a breach of the Ministerial Code. He refers to the manner in which the Scottish Government attempted to defend his petition for judicial review in which he challenged the legality of the Procedure and its application in his case.

14.2. As is now well known the Scottish Government's defence of the petition was a saga of failures to disclose relevant evidence. The key documents relevant to the Government's defence have been, rather belatedly, published by the Scottish Government on its website¹³.

14.3. I do not propose to set out here a full chronology of what happened. The key problem was that the Investigating Officer in charge of investigating the complaints against Mr Salmond had had prior contact with the complainers before the complaints were formally made. However, the Procedure Stated that the IO "will have had no prior involvement with any aspect of the matter being raised." Unfortunately the full extent of the prior involvement was not revealed all at once and the details of that involvement emerged in instalments. The impact of this can be gauged from counsel's response at different stages- "a very real problem indeed" and "extremely concerning" on 31 October, the Petition "more likely than not to succeed" on 6 December. On that date counsel advised

29 The question that will justifiably now be asked is where this takes us. There are only two options.

30 One is to concede the Petition and, if so advised, return to square one. We have no doubt whatsoever that this is not an attractive option: it would require the conceding of (doubtless substantial) expenses, and would be trumpeted everywhere by the petitioner.

31 The other is simply to press on regardless. That is, in many ways, even less attractive: the expenses will be far higher, and the trumpeting far louder, if the case proceeds to a written judgment. Moreover, and potentially of more concern, is the real prospect of damaging criticism from Lord Pentland. He is not a judge known to pull his punches, and we are both concerned at the

¹³ <https://www.gov.scot/publications/legal-advice-related-to-the-parliamentary-inquiry-into-the-scottish-governments-handling-of-harassment-complaints-sghhc/>.

possibility of criticism, both from the bench in the course of the hearing and in any written judgment, which would not reflect well on the respondents.

32 Ultimately, our own view is that the “least worst” option would be to concede the Petition. We understand how unpalatable that advice will be, and we do not tender it lightly. But we cannot let the respondents sail forth into January’s hearing without the now very real risks of doing so being crystal clear to all concerned¹⁴.

14.4. In an email of 11 December from an unknown Government source it is stated that the Lord Advocate “was indeed clear about no question of conceding, with a stress on the benefit that would accrue from a judicial finding (a) that it was right to have a procedure in such circumstances and (b) it was right to have this procedure, even if there is a risk - which we all know and understand - that he may be forced to hold that there were faults in the way it was applied in the particular case”. In another email of the same date from an unknown Government source it is stated that the Lord Advocate and the Solicitor General were “very clear that no question or need to drop the case. LA clear that even if prospects are not certain it is important that our case is heard. Senior Counsel made clear that his note was not intended to convey that he didn’t think we had a stateable case...¹⁵”

14.5. On 17 December Counsel’s pessimism had deepened. A joint advice of Senior and Junior Counsel of that date includes the following passages:-

1 We have drafted this note for the eyes of the Lord Advocate and Paul Cackette only.

2 It has been prepared in response to a series of events in the week of 10 December 2018 which led us to consider very seriously whether we were bound to withdraw from acting for the respondents in this matter. Having given the question anxious consideration we concluded that we would be entitled to so withdraw but at this stage are not bound to do so.

3 We introduce matters in this way to convey the seriousness of matters from our perspective.

31. It has become increasingly clear that the approach of the petitioner in this matter is one which may appropriately be described as a “scorched earth” one. It is clear that there is no concern on his part as to who might be criticised, or harmed, as a result of these proceedings. We understand that this is well understood by those “in the crosshairs” – most obviously the Permanent Secretary and the First Minister. If instructions are to proceed notwithstanding then so be it – we are not in a position where we are professionally unable to mount a defence (because, for example, there is no stateable defence). We are, however, perilously close to such a situation. We

¹⁴ [OCT-+LA05+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

¹⁵ [OCT-+LA06+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

are firmly of the view that at least one of the challenges mounted by the petitioner will be successful. We are told that there are other aspects to the case which justify the running of the defence and that, accordingly, there is no prospect of the petition being conceded. That decision is not for us to take and as long as informed consent is given the decision to proceed is one which we must obey. We are, however, entirely unconvinced as to what benefit that might arise from the hearing in January that might outweigh the potentially disastrous repercussions thereof. Leaving aside the large expenses bill that would inevitably arise, the personal and political fallout of an adverse decision – especially if, as may be the case, it is attended by judicial criticism – seems to us to be something which eclipses by some way the possibility of helpful judicial comments. That being so, and recognising as we do that the wider political picture is something that others are far better than are we to comment upon, we cannot let pass uncritically the suggestion that the petition cannot be conceded. It would be possible simply to accept (as is our genuine advice as a matter of law) that the appointment of JM as Investigating Officer was, whilst made in bona fide, on reflection indefensible. That would render nugatory all of the other, potentially more harmful, aspects to the challenge. Accepting that a technical error was made could not sensibly be criticised. This would protect those that might otherwise be harmed by the vigorous nature of the challenge that is to be mounted. It would stem the substantial expenses bill that we have no doubt is presently being incurred. Given that we genuinely cannot see the defence prevailing in any event, that seems to us to be the only sensible approach.

32 We are acutely aware that much of this has already been said, and discounted. The decision to proceed has been taken by very experienced legal and political minds, who are entitled to proceed as they wish. However, we are – independently but also mutually – unable to see that the benefits in proceeding come close to meeting the potential detriments in so doing. Given the potential for harm we simply wish all concerned – and we include the First Minister in this – to be absolutely certain that they wish us to plough on regardless notwithstanding the concerns which we have outlined¹⁶

14.6. On 19 December matters had deteriorated further. The following is from a joint note from counsel:

1 We write further to recent events. With regret, our dismay at this case deepens yet further.

¹⁶ [OCT-+LA24+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)

2 We will not rehearse the regrettable way in which document disclosure has unfolded. Suffice to say that we have each experienced extreme professional embarrassment as a result of assurances which we have given, both to our opponents and to the court, which assurances have been given on instructions, turning out to be false as a result of the revelation of further documents, highly relevant yet undisclosed. We, of course, required to consult at 9.15pm last night to discuss the ramifications thereof.

3 This morning, the first part of the commission began. The inevitable result of the last minute disclosure of the additional documents was that the commission required to be adjourned. The havers now cited for Friday can expect a torrid time in the witness box given the late disclosures. That comment applies in particular to the IO, for the reasons which follow.

4 All of that is bad enough. However, it pales beside the revelation in the course of this morning of two further documents. These give rise to the same two concerns discussed in the consultation last night: (i) the late nature of their revelation; and (ii) their content. Each document comes from the IO.

5 As to the late nature of the revelation, this is unexplained, and frankly inexplicable. Given the nature of the searches described by [redacted] as having been undertaken, we regret that we simply cannot understand why these documents have been made available only now¹⁷

14.7. There followed what was described as a “watershed moment” on 21 December¹⁸. The Investigating Officer in the case gave evidence on oath in the commission that in relation to a meeting between her and a complainer immediately before the complaint was made she could not remember that meeting. As counsel pointed out, this meant that the Government could not aver, much less prove, what happened at the meeting, and thus unable to rebut the rather obvious inferences that might be drawn from the fact that the meeting happened. Following this the Scottish Government decided to throw in the towel.

14.8. There is undoubtedly scope for political criticism of the manner in which Scottish Government handled Mr Salmond’s proceedings. That is not a matter for me to express any view upon. However, Mr Salmond argues that the manner in which the case was handled amounts to a breach of “the overarching duty on Ministers to comply with the law” stated in paragraph 2.30 of the Ministerial Code.

14.9. There are undoubtedly ways in which the handling of court proceedings could involve illegality. Perjury is a serious offence, and the tendering of evidence known or believed to be perjured would be a grave matter, as would

¹⁷ [Legal advice related to the Parliamentary Inquiry into the Scottish Government's Handling of Harassment Complaints \(SGHHC\) - gov.scot \(www.gov.scot\)](http://www.gov.scot/legislation/2017/01/2017-01-17-legal-advice-related-to-the-parliamentary-inquiry-into-the-scottish-government-s-handling-of-harassment-complaints-sghhc/)

¹⁸ [OCT+-+LA17+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](http://www.gov.scot/legislation/2017/01/2017-01-17-legal-advice-related-to-the-parliamentary-inquiry-into-the-scottish-government-s-handling-of-harassment-complaints-sghhc/)

the use of forged documents in legal proceedings. Malicious prosecution is both a tort and a crime. Conspiracy to pervert the course of justice is also a serious offence. It is also essential that judges can trust counsel and solicitors who appear before them and therefore very high standards are expected in respect of their duty of candour and not to mislead the court. Instructions to act in breach of these duties would therefore be a serious matter.

14.10. I cannot see that any of these issues arose in this case. On several occasions counsel made clear their disagreement with decisions that were made but in each case accepted that the final say rested with the Law Officers. There is no doubt from the whole manner and tone of counsel's advices that they would, quite properly, have declined to accept any instructions which were improper.

14.11. Mr Salmond appears to be under the misapprehension that the Government is under a duty to withdraw a case if advised that there is less than an even chance of winning. There is no such rule and the prediction of the outcome of cases is not an exact science.

14.12. There is in my opinion no evidence whatsoever that the First Minister acted improperly or in breach of the Ministerial Code with respect to Mr Salmond's petition. The evidence suggests that the key legal decisions were taken by the Law Officers. Having regard to the duty of the Law Officers to ensure that the Government acts lawfully at all times, and having regard to the position of the Lord Advocate under the Scotland Act (he cannot be removed from his position by the First Minister without the consent of the Scottish Parliament) I think the First Minister was fully entitled to rely on his legal advice.

15. The Ministerial Code: Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

15.1. Sections 4.22 and 4.23 of the Ministerial Code provide as follows:-

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or

contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

15.2. It seems to have been generally assumed, even in the terms of the remit itself, that section 4.22 of the Ministerial Code applied to the meetings between the First Minister and Mr Salmond. I begin by saying that I do not accept that these meetings can be considered as SNP party meetings for the reasons stated in paragraph 9.8 of this report in which I discuss the character of the meeting of 2 April. The First Minister has accepted that before that first meeting with Mr Salmond she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. As already explained I accept her statement that her motives for agreeing to the meeting were partly political and partly personal.

15.3. From the first sentence of paragraph 4.22 of the Code it is clear that the primary, and possibly the sole purpose of this provision is to deal with meetings with people and organisations which are held or can be considered “as part of the formulation of Government policy.” This is reinforced by the subsequent requirement in the paragraph “for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented.” Paragraph 4.23 then extends the provision to deal with the situation where informal meetings or discussions take place but again this is qualified by confining it to discussions containing “any significant content (such as substantive issues relating to Government decisions or contracts)”. Ministers must have numerous contacts every day which are not required to be recorded under this provision. The other highly significant aspect of this provision is that it applies only to “contacts with *external* individuals and organisations, including *outside* interest groups and lobbyists.” (Emphasis added).

15.4. We know what the discussions were about. They concerned a governmental process for dealing with harassment complaints against Scottish Government Ministers, former Ministers and officials generally known as “the Procedure”. As already stated its full and formal title is “Handling of harassment complaints involving current or former ministers” and it is described as an “*internal* (my emphasis) procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

15.5. Note that the procedure is clearly described as an internal procedure. It did not apply to anybody who did not and never had worked for Scottish Government. Indeed it was precisely the claim made by Scottish Government to have jurisdiction over harassment carried out by former Ministers during their time in office which formed a major bone of contention between Mr Salmond and the Scottish Government. In my opinion any person who was

being proceeded against under the Procedure, or for that matter was making a complaint under its provisions, was entitled to raise an issue without the matter being recorded under these provisions of the Code. I fully accept the logic of the First Minister's position that it would have been impossible to record such meetings or discussions without a risk of prejudicing the proceedings or interfering with their confidentiality.

15.6. In my opinion, therefore, neither the letter nor the spirit of paragraphs 4.22 and 4.23 of the Ministerial Code applied to the discussions between the First Minister and Mr Salmond. Consequently I do not consider that the First Minister acted in breach of the Code in not disclosing them prior to 5 June.

16. The Ministerial Code: Special Advisers

16.1. Paragraphs 4.15 to 4.19 of the Ministerial Code deal with special advisers. Much of these provisions deal with appointment, distribution of posts, salaries and terms and conditions of appointment. Special Advisers are subject to a code of conduct which was last revised in March 2017. This may need some further revision in the light of the implementation of the Procedure. If the First Minister is to remain excluded from any involvement in the Procedure consideration might be given to whether this should also apply to the Chief of Staff and other special advisers. Consideration might also be given to whether some of the provisions of the Ministerial Code which apply to Ministers should also apply with appropriate modifications to special advisers, for example, the requirement to record external contacts.

17. The alleged leak to the Daily Record

17.1. Mr Salmond has asked for an investigation into whether an alleged criminal leak of part of the contents of the Permanent Secretary's Decision report to the Daily Record was sourced from the First Minister's Office.

17.2. It is no part of my function and I have no power to investigate criminal offences. If Mr Salmond has evidence to support this complaint he should refer the matter to the police.

18. Conclusions and recommendations

18.1. I have considered the following issues which were alleged to amount to a breach of the Ministerial Code by the First Minister:-

1. The allegation that her failure to record her meetings with and telephone discussions with Mr Salmond and others on 29 March, 2 and 23 April, 7 June and 14 and 18 July 2018 amounted to a breach of paragraphs 4.22 and 4.23 of the Ministerial Code.

2. The allegation that the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for

Handling of Harassment Complaints involving Current or Former Ministers (“the Procedure”).

3. The allegation that the First Minister misled the Scottish Parliament in relation to her meetings as specified in paragraph 1 above.

4. The allegation that the First Minister was in breach of her duty to comply with the law in respect of the Scottish Government’s response to the petition of Mr Salmond for judicial review of the Procedure.

18.2. For the reasons set out in detail above in this Report I am of the opinion that the First Minister did not breach the provisions of the Ministerial Code in respect of any of these matters.

18.3. The remit also invited me to consider “whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.” In view of the urgency of addressing the other issues relating to alleged breaches of the Ministerial Code which are referred to in the remit I decided to defer consideration of this. It would also in my opinion be appropriate that the other independent adviser also take part in this process. It would also seem sensible to await decisions on what changes if any are to be made to the Procedure. It might also be appropriate to consider the matters relating to special advisers referred to in Chapter 16 in this context.

James Hamilton

20 March 2021

Bibliography

The Ministerial Code

The Scottish Ministerial Code can be found at the following link:

[Scottish Ministerial Code: 2018 edition - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/ministerial-code/pages/introduction.aspx)

The Procedure

The procedure entitled “Handling of harassment complaints involving current or former ministers”, under which the original complaints were handled, can be found here: [https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/](https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/pages/introduction.aspx)

The Scottish Government provided a submission to the Scottish Parliament Committee on the development of the policy. This can be found at the following link: [SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf \(www.gov.scot\)](https://www.gov.scot/publications/parliamentary-submissions/pages/development-of-the-policy.aspx)

The Scottish Government also provided a timeline of the development of the procedure. This can be found at the following link:

[Timeline for Statement 1 - 14 August\(1\).pdf \(parliament.scot\)](https://www.parliament.scot/parliamentary-business/timelines/timeline-for-statement-1-14-august-2020)

Documents supporting written statement on the development of the policy

Circulation of draft version 5.0 of the procedure for review :

[SP+SGHHC1+XX001+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](https://www.gov.scot/publications/draft-version-5-0-of-the-procedure-for-review/pages/introduction.aspx)

Discussion of the procedure covering all harassment not only sexual harassment :

[SP+SGHHC1+YY044+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](https://www.gov.scot/publications/discussion-of-the-procedure-covering-all-harassment-not-only-sexual-harassment/pages/introduction.aspx)

Fairness at work

There are a number of publically available sources which give background on fairness at work and harassment complaints in the Scottish Government.

This link provides information on harassment complaints up to 2017:

[Internal complaint system: FOI release - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/internal-complaint-system-foi-release/pages/introduction.aspx)

This link provides information to People Survey conducted yearly in the Scottish Government to obtain view from our employees about the experience of working in the Scottish Government and its agencies:

[Scottish Government People Survey 2005 to 2018 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/people-survey-2005-to-2018/pages/introduction.aspx)

The Judicial Review

The Scottish Government provided a submission to the Scottish Parliament Committee on the conduct of the Judicial Review. This can be found at the following link:

[SP SGHHC2 Written Statement on the Judicial Review 20 July 2020.pdf \(parliament.scot\)](#)

Official Committee's reports

The Committee's evidence session with the First Minister:

[Official Report \(parliament.scot\)](#)

First Minister's opening statement on 8th January 2018:

[Official Report 8 Jan 2019 \(parliament.scot\)](#)

Alex Salmond evidence submission of 23rd February 2021:

[Alex Salmond \(5\) \(further redactions 23.02.2021\).pdf \(parliament.scot\)](#)

Documents to Legal privileged advice :

Joint counsel note of 6th December 2018 :

[OCT-+LA05+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

Consultation with Law Officers, Senior Counsel and SGLD:

[OCT-+LA06+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

Joint Counsel Note of 17th December 2018:

[OCT-+LA24+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)

Joint Counsel Note of 19th December 2018:

[Legal advice related to the Parliamentary Inquiry into the Scottish Government's Handling of Harassment Complaints \(SGHHC\) - gov.scot \(www.gov.scot\)](#)

Counsel's email to SGLD regarding the prior contact between IO and complainants:

[OCT+-+LA17+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)

James Hamilton
Independent Adviser on the Scottish Ministerial
Code

c/o E: [REDACTED]@gov.scot

—

21 March 2021

Dear Mr Swinney,

MINISTERIAL CODE REFERRAL- REPORT

In accordance with my role as adviser on the Ministerial Code, I have investigated the matters set out in the remit for the investigation into the First Minister's self-referral under the Ministerial Code.

I enclose my final report, which addresses the questions set out in the remit, including whether the Ministerial Code is engaged regarding the meetings and discussions included in the remit; and whether there has been any breach of the Code and the nature of any such breach.

In the course of my investigation, participants have provided statements which raised additional issues that I considered relevant to the remit. Accordingly, the report covers these matters and considers whether there has been any breach of the Code and the nature of any such breach.

I understand that, in order to comply with the court orders, it will be necessary to make significant redactions to the enclosed report before publication. I have enclosed a short note setting out my views on this matter. I request that, in order to make my position on these issues clear, this is published alongside the report.

The remit also invited me to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure. I consider that this aspect of the remit would be best delivered alongside the consideration of any updated Procedure, and by both Ministerial Code advisers. Accordingly, I would

propose to work with the other Ministerial Code adviser to prepare recommendations on this topic.

I note that the report is to be published on the day it is received.

Yours sincerely,

James Hamilton

Some considerations

I have enclosed a copy of my report, which is drafted in such a way to fulfil the remit I was set in the way I consider necessary to give a full account of events and my deliberations.

I understand that, in order to comply with the court orders, it will be necessary to make extensive redactions to the enclosed report before publication. This is due to the phenomenon known as jigsaw identification.

[REDACTED]

I am deeply frustrated that the court orders which apply to this area will have the effect of preventing publication of a report fulfilling the remit in the way I see appropriate.

A key part of the report necessarily refers events in [REDACTED], which are highly significant for understanding who was aware of the complaints and what they did with that information. The discussions set in train a series of events which ultimately led to the meeting between the First Minister and the Former Chief of Staff on 29 March and the subsequent contacts between the First Minister and Mr Salmond. It is also essential that I be in a position to fully discuss how and by whom these meetings were arranged.

Redacting my report may mean that the report is disjointed to read, my reasoning at times obscure and the logic of some of my conclusions hard to follow.

[REDACTED]

Nevertheless, I understand that there is no alternative approach which would allow my unredacted report to be published. On that basis, I accept that the redacted report should be published in order to bring this process to a close, and because there is a strong public interest in publishing my conclusions.

I request that any publication should include this note as a supporting document. I also ask that any redactions be done in such a way as to show how much text has been removed, so that those reading the report may understand the extent to which the information they are provided with has been limited by legal constraints.

From: Shawn McArthur <shawn.mcarthur@Advocates.org.uk> **On Behalf Of** Sheena Hume
Sent: 20 October 2020 10:46
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

Thanks for your email below, I have picked this up in Sheena's absence.

Please do send on any documents to us and we can pass these along to Douglas.

Kind regards

Shawn McArthur | Deputy Advocates' Clerk | Ampersand Advocates | [REDACTED]
[REDACTED]

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From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 20 October 2020 10:21
To: Sheena Hume
Subject: RE: James Hamilton- Ministerial code referral

Hi Sheena,

Apologies for the delay, I wanted to double check things with Mr Hamilton and seek confirmation in writing that he was content to instruct. Mr Hamilton has now confirmed that he would like to proceed to instruct so we are fine to proceed.

[REDACTED]

I think the best thing would be if you could direct any future fees notice to myself and I will liaise with my colleagues here to organise payment. I'm going to double check with colleagues whether that is the best approach and will let you know if I need to make any modifications to this arrangement.

Best wishes,

[REDACTED]

From: Sheena Hume <sheena.hume@Advocates.org.uk>
Sent: 15 October 2020 14:52
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

[REDACTED]

Please advise if you intend to proceed to instruct. If you are able to advise who any future fee note should be directed to that would assist with setting up a case file at my end. I note you've advised Jennifer that the costs will be met the by Scottish government.

Kind regards.
Sheena

Sheena Hume | Deputy Advocates' Clerk | Ampersand Advocates | [REDACTED] |
ampersandadvocates.com

From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>
Sent: 15 October 2020 11:17
To: Sheena Hume <sheena.hume@Advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Hi Sheena,

Apologies, [REDACTED]. Thanks for spotting that.

Best wishes,

[REDACTED]

From: Sheena Hume <sheena.hume@Advocates.org.uk>
Sent: 15 October 2020 11:13
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

Thanks for your email to Jennifer which I've picked up in her absence. [REDACTED]

Kind regards.
Sheena

Sheena Hume | Deputy Advocates' Clerk | Ampersand Advocates | [REDACTED] |
ampersandadvocates.com

From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>
Sent: 15 October 2020 10:15
To: Jennifer Dunn <jennifer.dunn@advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Hi Jennifer,

Many thanks for getting back to us so quickly. I have spoken to Mr Hamilton about the timings and he thinks the timings set out below will work well, as we expect that the bulk of the work will be later into November.

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

From: Jennifer Dunn <jennifer.dunn@advocates.org.uk>

Sent: 14 October 2020 11:09

To: [REDACTED] <[REDACTED]@gov.scot>

Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

Thank you for confirming.

I have spoken with Mr Ross who would very much like to assist Mr Hamilton. As I mentioned on the phone he is fully engaged on a case with looming deadlines at the moment so has little to no time available between now and 30th October. Thereafter, beside the last week of November (w/c 23/11) where he is not available, he would have some time to assist. I'm not sure if that is helpful to Mr Hamilton but if you could confirm either way I would be grateful.

If Mr Hamilton would like to give Mr Ross a call he would be happy to speak to him. His mobile number is [REDACTED]

Kind Regards
Jennifer

Jennifer Dunn | Deputy Advocates' Clerk | Ampersand Advocates | [REDACTED]
(forwarding to: [REDACTED] | ampersandadvocates.com)

[REDACTED]

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From: [REDACTED]@gov.scot [REDACTED]@gov.scot>
Sent: 14 October 2020 10:53
To: Jennifer Dunn <jennifer.dunn@advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Hi Jennifer,

The line in the PQ referencing costs relates only to Mr Hamilton himself. The Scottish Government is covering the expenses incurred by Mr Hamilton in undertaking his work.

Best wishes,

[REDACTED]

From: Jennifer Dunn <jennifer.dunn@advocates.org.uk>
Sent: 14 October 2020 10:42
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: James Hamilton- Ministerial code referral

Dear [REDACTED]

Thank you for your email. Can I clarify one point with you before I speak to Douglas. I note from the attachment that '*appointment as an independent advisor does not attract payment*'. Is that referring to Mr Ross not being paid for any legal advice he gives here or to something else? Many thanks.

Kind Regards
Jennifer

Jennifer Dunn | Deputy Advocates' Clerk | Ampersand Advocates | [REDACTED]
(forwarding to: [REDACTED]) | ampersandadvocates.com

[REDACTED]

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From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>
Sent: 14 October 2020 10:12
To: Jennifer Dunn <jennifer.dunn@advocates.org.uk>
Subject: James Hamilton- Ministerial code referral

Dear Jennifer,

Thank you for the phone conversation earlier this morning. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Happy to provide more information if that would be helpful.

Best wishes,

[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code
| Please contact me on Skype or on [REDACTED]

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From: [REDACTED]
Sent: 20 October 2020 14:02
To: James Hamilton [REDACTED]
Subject: RE: FW: Mr James Hamilton

Hi James,

I've made some comments on the attached letter- I think that on the first point we can probably use some similar text to that in the first letter re. the legal clearance of the report,
[REDACTED]

I think the second point is a bit trickier as I don't think we can offer advice on what Mr Salmond may choose to do, only to note what you are intending to do. With that in mind, I've suggested adding a line with your previous committee correspondence, as this makes clear the intended position re. publishing evidence.

If you get a chance, would you be able to look at the suggested response to the committee today, so I can respond by close of play if possible?

Best wishes,

[REDACTED]

From: James Hamilton
Sent: 19 October 2020 16:29
To: [REDACTED]
Subject: Re: FW: Mr James Hamilton

Hi [REDACTED]

Suggested reply to this further letter. You might let me have any comments [REDACTED]
[REDACTED]

Best wishes

James

On Mon, 19 Oct 2020 at 09:55, James Hamilton [REDACTED] wrote:
OK

On Sun 18 Oct 2020 at 13:24, <[REDACTED]@gov.scot> wrote:
Further correspondence from Mr Salmond with an additional question to consider. If you think it would be appropriate, I will send a short email on Monday confirming you have received the correspondence, are considering the questions posed, and will respond in due course.

From: Alex Salmond [REDACTED]
Sent: 17 October 2020 12:34
To: [REDACTED] [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Mr James Hamilton

Mr James Hamilton
Independent Adviser on The Scottish Ministerial Code.

17th October 2020

Dear Mr Hamilton

Further to my letter of 8th October I await an answer to the questions posed or an acknowledgement of the email. Could you ask your staff to provide this?

I am now in receipt of several press queries on whether I have been in communication with you. My practice with the Parliamentary Committee has been to "no comment" but draw attention to the publication of correspondence. However, I doubt that it is your intention to publish correspondence and therefore I would wish your guidance on how to reply to these questions.

On which subject I enclose a letter which my lawyers sent to the Parliamentary Committee on 14th October, which is clearly relevant to your remit, however it be defined.

Yours sincerely

The Rt Hon Alex Salmond

Appendix 1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sent from my iPad

On 6 Oct 2020, at 22:28, Alex Salmond [REDACTED] wrote:

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the "court in the criminal proceedings". I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th

October 2018. This was sought by my counsel and as I recall the Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process. For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your enquiries.

You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee information gained in disclosure in the criminal proceedings they will be liable to prosecution. I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the Government to supply you with it. Your difficulty is that you do not know what it is and I am currently debarred from informing you.

Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd. However Mr Hynd was himself deeply involved in the Scottish Government's unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy. I do not dispute Mr Hynd's personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.

Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down. There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?

Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at [REDACTED]

Yours faithfully

The Rt Hon Alex Salmond

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Dear Mr Salmond

Thank you for your further letter of 17 October 2020.

Naturally any response to my enquiries relating to the factual matters I am asked to enquire into will be used in the compilation of the report. I have not yet decided fully on the format of the report but you should assume that any correspondence between us will be liable to be published with the exception of material which cannot be made public as a result of court orders or for other legal reasons.

I have set out various matters relevant to your questions in my recent correspondence with the Parliamentary committee.

https://www.parliament.scot/HarassmentComplaintsCommittee/James_Hamilton.pdf

With regard to incidental queries it would not be my intention to publish them as a matter of routine and it would be my preferred option to make no comment pending the completion of my enquiries. However, I am concerned not to favour or be perceived to favour any particular interested party in the matter and therefore if I were asked questions concerning contacts between interested parties and me I might well think it appropriate or necessary in the public interest and in particular in the interests of transparency to give a full reply.

For that reason I think it would be reasonable for us both to assume that any correspondence between us is likely at some stage to be published.

I hope this answers your question.

Yours etc

RE: Publication of written submission - James Hamilton

From: SGHHC <sghhc@parliament.scot>
To: [REDACTED] <[REDACTED]@gov.scot>
Date: Tue, 20 Oct 2020 16:04:55 +0000

Many thanks for the update [REDACTED]
[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>
Sent: 20 October 2020 17:02
To: SGHHC <SGHHC@Parliament.Scot>
Subject: RE: Publication of written submission - James Hamilton

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Dear Clerking team,

Mr Hamilton has asked me to pass on the following update:
Further to the update I provided to the Committee in August, I can confirm that I have sought written statements from a number of individuals who were involved in matters covered by my remit. I am currently undertaking analysis of these statements, and considering what additional information I may wish to seek. As this process is ongoing I am not able to provide any specific timescales within which I expect to finish my work.
Best wishes,

From: SGHHC <SGHHC@Parliament.Scot>
Sent: 07 October 2020 14:32
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Publication of written submission - James Hamilton

Hi [REDACTED]

The Committee meets again on 27th October so an update by 20th October would be useful so we can include any update in Committee papers for that meeting,

Kind regards

SGHHC Clerking team

From: [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>
Sent: Wednesday, October 7, 2020 2:20 PM
To: SGHHC <SGHHC@Parliament.Scot>
Subject: RE: Publication of written submission - James Hamilton

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Dear Clerking team,

I have passed your email to Mr Hamilton. You have asked if Mr Hamilton would be able to provide an update on timings- I just wanted to check if there is a particular deadline by which it would be helpful to have this?

Best wishes,

[REDACTED]

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 06 October 2020 17:20
To: SGHHC <SGHHC@Parliament.Scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Publication of written submission - James Hamilton

Dear Clerking team

The secretariat has now been established and is led by [REDACTED], to whom I am copying your email.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: SGHHC <SGHHC@Parliament.Scot>
Sent: 06 October 2020 17:03
To: Hynd JS (James) <James.Hynd@gov.scot>
Subject: Publication of written submission - James Hamilton

Dear Mr Hynd,

I note from your email of 3 August that you were acting as liaison for James Hamilton until a secretariat had been established to support his work.

I'd be grateful if you could pass this email to Mr Hamilton or the secretariat to inform him that his written submission to the SGHHC Committee will be published on the Committee's website tomorrow morning.

In Mr Hamilton's written submission, he noted that he was unable to comment on a timescales. If possible, it would be helpful to receive an update on this.

Kind regards

SGHHC Committee Clerking Team

From: James.Hynd@gov.scot <James.Hynd@gov.scot>
Sent: 03 August 2020 22:08
To: SGHHC <SGHHC@Parliament.Scot>
Subject: Response from James Hamilton, Independent Adviser on the Scottish Ministerial Code

Dear [REDACTED]

As you know, the Convener wrote to James Hamilton, the independent adviser on the Scottish Ministerial Code on 7 July.

Mr Hamilton has asked that I pass on to you his response, as attached. For the avoidance of doubt, I am sending this on Mr Hamilton's behalf as the independent adviser and not on behalf of the Scottish Government.

We are planning to put in place a secretariat to support Mr Hamilton during the referral. Until that is in place I am happy to liaise with Mr Hamilton as required.

Kind regards

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

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From: [REDACTED]
Sent: 20 November 2020 15:34
To: 'James Hamilton' [REDACTED]
Subject: Additional letters- updated drafts and contact details

Hi James,

I've put together the additional letters- I've attached these. I need to do another proofread of these to address the questions about respective meetings before they are ready to issue, but thought I would send them over now for awareness and in case you have comments.

In terms of sending them, I've got postal addresses for the following:

- Stuart Nicholson
- Duncan Hamilton
- David Clegg
- Peter Murrell

Direct email addresses for:

- Stuart Nicholson
- Duncan Hamilton

Indirect email addresses for

- Kevin Pringle
- David Clegg
- Peter Murrell

I think we would need to ask Mr Aberdeen to help facilitate contact with Lorraine Kay, I can't find any contact details for her online at all.

Given the time pressure, and the likelihood that many people are still working from home and therefore not picking up post from offices, I wondered about sending the letters by email where we have direct email addresses, noting that a hard copy has also been sent?

Happy to discuss.

Best wishes,

[REDACTED]

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]

Kevin Pringle
Reform Scotland

[] November 2020

Dear Kevin Pringle,

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you may know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [to be attached].

My purpose in writing is to seek from you information to assist me in preparing my report.

Written submissions provided by other participants have indicated that Geoff Aberdeen sought a conversation with you and other participants [REDACTED]. This conversation was apparently to discuss contact between Geoff Aberdeen [REDACTED] concerning official complaints about Mr. Salmond.

I would be grateful if you could confirm if this information is correct, and provide any further information you may have about this conversation that would be relevant to my remit.

It would be helpful to have your response to this letter by [REDACTED]. Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]

Stuart Nicholson

[] November 2020

Dear Stuart Nicholson,

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you will know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [REDACTED]

My purpose in writing is to seek from you information to assist me in preparing my report.

Written submissions provided by other participants have indicated that Geoff Aberdeen contacted you on 14 January 2019, with a copy of a press statement he intended to provide. This statement set out the circumstances of meetings [REDACTED]
[REDACTED]

I would be grateful if you could confirm if this information is correct, and provide any further information you may have about this contact or your understanding of the circumstances surrounding the meetings referred to in the statement that would be relevant to my remit.

It would be helpful to have your response to this letter by [REDACTED]
Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E [REDACTED]

Kevin Pringle
Reform Scotland

[] November 2020

Dear Kevin Pringle,

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you may know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [REDACTED]

My purpose in writing is to seek from you information to assist me in preparing my report.

Written submissions provided by other participants have indicated that Geoff Aberdeen sought a conversation with you sometime [REDACTED]
[REDACTED] This conversation was apparently to discuss contact between Geoff Aberdeen [REDACTED] concerning official complaints about Mr. Salmond [REDACTED]

I would be grateful if you could confirm if this information is correct, and provide any further information you may have about this conversation or any meetings that were discussed that would be relevant to my remit.

It would be helpful to have your response to this letter by [REDACTED]
Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]

Duncan Hamilton
AMA Advocates
DX ED 549302
Edinburgh 36
LP3 Edinburgh 10

[] November 2020

Dear Mr Hamilton,

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you may know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [REDACTED]

My purpose in writing is to seek from you information to assist me in preparing my report.

Written submissions provided by other participants have indicated that you were present at and participated in a meeting between the First Minister and Alex Salmond, which was held at the First Ministers house on 2 April 2018. The submission also indicates that you participated in preliminary conversations concerning the purpose of the meeting and the arrangements to be made.

I would be grateful if you could provide a short written statement on this meeting including; what you understood the purpose of the meeting to be; any information you have on how and when the meeting was arranged; who participated and on what basis; and any further information you have that would be relevant to my remit.

It would be helpful to have your response to this letter by [REDACTED]
Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]

Peter Murrell
Chief Executive
SNP

[] November 2020

Dear Mr Murrell,

SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL

As you know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [REDACTED]

My purpose in writing is to seek from you information to assist me in preparing my report.

In your written submission to the Committee on the Scottish Government Handling of Harassment Complaints, you stated that you were aware of the meeting taking place on 2 April 2018 between the First Minister and Mr. Salmond, but that you were not present and did not participate in the meeting.

I would be grateful if you could confirm the information set out in your response to the Committee, and if there is any additional information you would like to provide that is relevant to my remit.

Once I have the material requested above, I expect that it may be necessary to interview you about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by [REDACTED]
Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

RE: Perm Sec interview

From: [REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]>
Date: Thu, 21 Jan 2021 14:36:41 +0000
Attachments: Video conferencing arrangements.docx (21.88 kB)

Hi James,

No problems, I've confirmed the interview with Private Office.

I've attached an updated set of joining instructions covering key aspects of the interview procedure, with some questions about certain aspects. Happy to discuss.

Before we issue to participants I think it would be good to test that we can get Cisco Webex to work on our respective devices. I will also do a separate test of the meeting recording function/playback etc.

I also wanted to double check the following:

- would you like to share a list of questions in advance?
- would you like Mr Ross to be present?
- would you like Mr Ross to look at the questions before the interview?

Best wishes,

[REDACTED]

From: James Hamilton <[REDACTED]>
Sent: 21 January 2021 12:41
To: [REDACTED]@gov.scot>
Subject: Re: Perm Sec interview

Hi [REDACTED]

I am inclined to get it out of the way. There may not be a whole lot I need to ask her about. I would be interested to know a little more about how the "Procedure" was adopted. It would also be important in my view to hear her confirm that the FM did not interfere in that process.

Best. wishes

James

On Thu, 21 Jan 2021 at 12:15, <[REDACTED]@gov.scot> wrote:

Hi James,

Just wanted to check if you would like the Perm Sec interview to go ahead next week- her office have been in touch to confirm if it is going ahead as we held the slot on a contingency basis.

Best wishes,

[REDACTED]

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Independent Advisor- Ministerial Code- meeting protocol

As part of James Hamilton's work on the ministerial code inquiry, it may be necessary to undertake interviews with various parties who have information relating to the matters under investigation.

Method

In person interviews would be very challenging at the moment due to coronavirus travel and meeting restrictions. The current lockdown arrangements make it legally mandatory for work to be done at from home where possible; in addition, travel restrictions relating to domestic and international travel are in place.

For these reasons, the interviews will be conducted via videoconference.

Videoconference is preferred rather than teleconferencing, as this will allow greater recognition of the reactions of the interviewees.

The video conferencing software will need to:

- Allow 3 or 4 participants.
- Function on Scots, non Scots and Apple devices.
- Allow audio of the meeting to be recorded
- Have no known security issues
- (if possible) Allows participants to download the software without incurring a cost

The suggested conferencing software is Cisco Webex.

The interviews will be recorded using audio technology and the files will be password protected and held securely.

Attendees

The ACAS best practice guidance on grievance and disciplinary meetings explains the following:

In some circumstances, workers have a statutory right to be accompanied where they are required or invited by their employer to attend certain disciplinary meetings. The chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. Workers must make a reasonable request to their employer to be accompanied.

Employers are free, but are not obliged, to allow workers to be accompanied by a companion who does not fall within the above categories. Some workers may have a contractual right to be accompanied by persons other than those listed above (for instance a professional support body, partner, spouse or legal

representative).

Although these meetings are conducted for a different purpose, the principles set out in the guidance provide some guidance for discussions with those participating in the code referral.

Attendees will be allowed to bring a companion to the meetings, e.g. from a trade union if they are a member.

A member of the secretariat will attend the meetings, to ensure the meeting progresses smoothly, and to ensure the recording of the meeting.

Invitation

Participants will be invited to take part in a video interview, and the proposed practical arrangements for the interview described as set out above.

Joining instructions

These will be sent out 1 week before each meeting.

These will include; the start and end time of the meeting; participant list; instructions on how to participate in the meeting, including links and passwords; arrangements in case the interview fails/breaks down.

Recording of the meeting

An audio recording of the meeting will be taken. The secretariat will also take notes.

A typed record of the meeting will be produced, and provided to all participants within 10 working days of the meeting.

Troubleshooting

Video Interview with James Hamilton, Independent Advisor on the Ministerial Code

Thank you for agreeing to participate in a video interview with James Hamilton, Independent Advisor on the Ministerial Code.

These joining instructions explain key aspects of how the interview will be conducted.

The time and date of the relevant interview has been agreed, and a calendar request created.

Video Conferencing

The current lockdown arrangements make it legally mandatory for work to be done at from home where possible; in addition, travel restrictions relating to domestic and international travel are in place. For these reasons, the interviews will be conducted via videoconference, using Cisco Webex.

This software allows video and audio conferencing, and can be accessed via Scots, Microsoft and Apple devices.

Participants need to create a Cisco Webex account to access the meeting. Instructions on how to do this can be found here: <https://cart.webex.com/sign-up-webex>

The secretariat will arrange a test of the videoconferencing arrangements before each interview.

Attendees

Attendees will be allowed to bring a companion to the meetings, e.g. from a trade union if they are a member.

A member of the secretariat will attend the meetings, to ensure the meeting progresses smoothly, and to ensure the recording of the meeting.

Recording of the meeting

An audio recording of the meeting will be taken. The secretariat will also take notes.

The secretariat will use the recordings to produce a transcript of the meeting. The transcript will be shared with the participant within 10 working days of the meeting.

The audio recording and transcript will be retained during the course of the investigation, and for 3 months after the conclusion of the investigation. The audio recording will then be destroyed. The transcript will be retained.

Troubleshooting

A teleconferencing number will be provided as a backup, should the videoconferencing arrangements fail.

RE: Video conferencing- cisco webex

From: [REDACTED]@gov.scot>
To: [REDACTED]@gov.scot>
Date: Thu, 21 Jan 2021 12:18:17 +0000

Hi [REDACTED]

The details are below – but be aware the card expires in February and James is currently waiting for the new card to be sent to his home address:



Many thanks, [REDACTED]

[REDACTED] | [Scottish Government | Cabinet, Parliament and Governance Division](#) | Tel: [REDACTED]
[REDACTED] | email: [REDACTED]@gov.scot

From: [REDACTED]@gov.scot>
Sent: 21 January 2021 12:11
To: [REDACTED]@gov.scot>
Subject: RE: Video conferencing- cisco webex

Hi [REDACTED]

It's taken quite a while to progress this but we're now (finally) ready to do some video interviews.

As discussed, could you provide the EPC card details so I can sign up for a Cisco Webex account? James Hynd has approved the expense.

I will try and keep the subscription to the minimum length of time needed- don't see it being longer than 2 months, so an expenditure of around £50-60 in total.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 15 October 2020 10:16
To: [REDACTED]@gov.scot>
Subject: RE: Video conferencing- cisco webex

Hi [REDACTED],

I haven't checked with James but I will do once he returns from leave, and I think the EPC card would be an ideal approach!

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 12 October 2020 16:32
To: [REDACTED]
Subject: RE: Video conferencing- cisco webex

Hi [REDACTED]

Good choice, for who is going to pay for this do you need to clear through James to see if we can pay for it. If so, I can then give you our epc card details to pay by credit card.

Thanks, [REDACTED]

[REDACTED] | [Scottish Government | Cabinet, Parliament and Governance Division](#) | Tel: [REDACTED]
| email: [REDACTED]@gov.scot

From: [REDACTED]@gov.scot>
Sent: 12 October 2020 16:15
To: [REDACTED]@gov.scot>
Subject: RE: Video conferencing- cisco webex

Hi [REDACTED]

Thanks, that's really helpful. I think that we will be looking to do interviews before then so Teams will probably come in in the middle of our work.

Looking at this link I think I need a starter account, probably only for 3 months or so.

<https://www.webex.com/pricing/index.html>

Could you check how/if it would be possible to sort this out through SG channels?

Best wishes,

[REDACTED]

From: [REDACTED]@gov.scot>
Sent: 12 October 2020 12:46
To: [REDACTED]@gov.scot>
Subject: RE: Video conferencing- cisco webex
Importance: High

Hi [REDACTED]

We have never subscribed to Webex so will not have a paid account. I have never used Webex but I am sure it isn't that difficult.

Are the interviews for Mr Hamilton taking place before the role out of Microsoft Teams at the beginning of November? Not sure what level that is regarding sensitivity and whether phase one includes users out with Scottish Government.

Let me know if you need any help with anything.

Thanks,

[REDACTED]
[REDACTED] | Scottish Government | Cabinet, Parliament and Governance Division | Tel:
[REDACTED] | email: [REDACTED]@gov.scot

From: [REDACTED]@gov.scot>
Sent: 12 October 2020 12:30
To: [REDACTED]@gov.scot>
Subject: Video conferencing- cisco webex

Hi [REDACTED],

As part of the Mr Hamilton work, I'm looking to sort out video conferencing which would include the possibility of recording the interview. From the looks of things, Cisco Webex seems to be the best Scots approved tool.

The guidance is here:

<http://saltire/my-workplace/meetings/Audio-and-video-conferencing/Pages/web-conferencing.aspx?pageid=61699026-d85d-47a2-928c-8fa88c277618>

From the looks of things, in order to get the functionality I want I need some kind of paid account. I wondered if you knew if there was any existing subscription within the division, or had any experience in setting one up?

Best wishes,

[REDACTED]

From: Geoff Aberdeen <[REDACTED]>
Sent: 21 March 2021 11:36
To: [REDACTED]@gov.scot>
Subject: Re: Interview transcript [UNSCANNED]

Thanks [REDACTED].

So I can expect to receive notification of GDPR later today or tomorrow morning?

Geoff

Regards,

Geoff

From: [REDACTED]@gov.scot>
Sent: Sunday, March 21, 2021 11:19:19 AM
To: [REDACTED]
Subject: RE: Interview transcript [UNSCANNED]

Hi Geoff,

Apologies for disturbing your weekend, but I thought it would be helpful to let you know that we are expecting to send the final report to SG very soon. Happy to discuss.

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 19 March 2021 14:32
To: 'Geoff Aberdeen' [REDACTED]
Subject: RE: Interview transcript [UNSCANNED]

Hi Geoff,

I will let Mr Hamilton know and see if that would be possible.

I understand the difficulties re. GDPR and timings- I will check with Mr Hamilton what we can do about communicating a specific time for handover (so you can predict when GDPR stuff might happen). Do you check this email address over the weekend?

Best wishes,

[REDACTED]

From: Geoff Aberdeen [REDACTED]
Sent: 19 March 2021 13:38

To: [REDACTED]@gov.scot>

Subject: Re: Interview transcript [UNSCANNED]

Thanks [REDACTED].

Much appreciated. I don't know if this is possible but even referring to me as 'Mr Salmond's former Chief of Staff' would be helpful.

Do you have any indication on timings? I obviously work so want to try and ensure I have time to consider anything in light of GDPR process you have raised below.

Geoff

Regards,

Geoff

From: [REDACTED]@gov.scot>

Sent: Wednesday, March 17, 2021 9:23:31 AM

To: [REDACTED]

Subject: RE: Interview transcript [UNSCANNED]

Hi Geoff,

Apologies for the delay, I have had a response to you sitting in draft since yesterday morning but events yesterday meant I didn't get chance to finish it.

Thanks for sending the BBC news story, I will pass this on to Mr Hamilton.

Thanks for confirming you are content with the transcript.

I have passed on your email to Mr Hamilton; as discussed previously he understands the difficulty this whole process has caused you and intends to minimise any inclusion of your name in the report as far as possible.

I understand that the Scottish Government, as publisher, will send GDPR notifications to all those named in the report before publication of the report in the usual fashion, which will give you an opportunity to consider any specific content and raise objections.

In terms of the retention of documents from the review, we are working on finalising the details of this at the moment, and will be back in touch with more information as soon as possible.

Happy to discuss.

Best wishes,

[REDACTED]

From: Geoff Aberdeen <[REDACTED]>
Sent: 17 March 2021 08:27
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: FW: Interview transcript [UNSCANNED]

Good morning [REDACTED]

I appreciate you must be incredibly busy but would appreciate a response to my email below at your earliest convenience.

[REDACTED]

[REDACTED]

Best wishes

Geoff

From: Geoff Aberdeen <[REDACTED]>
Date: Monday, 15 March 2021 at 11:54
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Interview transcript [UNSCANNED]

Hi [REDACTED]

Thank you for this.

I think the transcript essentially covers what my position is and has been throughout.

[REDACTED]

[REDACTED]

Furthermore, can you provide me with any information as to how (if at all) I may be referred to in Mr Hamilton's report? As you can imagine, this whole situation has caused me significant amount of emotional and professional discomfort and my strong preference is not to be referred to by name at all.

Finally, I'm extremely uncomfortable with this transcript being sent to the Scottish Government and potentially within scope of a future FOI. I request this is not sent to the Scottish Government in any form. I have done my civic duty in assisting Mr Hamilton with his investigation but remain very wary of the transcript being made available at a later date and causing me further discomfort.

Thank you for your guidance to date and I look forward to hearing from you.

Best wishes

Geoff

From: [REDACTED] <[REDACTED]@gov.scot>
Date: Friday, 12 March 2021 at 14:11
To: [REDACTED]
Subject: Interview transcript [UNSCANNED]

Dear Geoff,

With apologies for the delay, please see attached transcript of the discussion you had with Mr Hamilton last week. As discussed, this has been adjusted to remove some specific names in certain contexts. Where the transcript has been adjusted, the new text is included in square brackets.

The document is password protected; I will send the password in a separate email.

Happy [REDACTED] discuss.

Best wishes,

[REDACTED]

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From: [REDACTED]
Sent: 21 March 2021 11:12
To: James Hamilton [REDACTED]
Subject: Final report- with formatting

Hi James,

Please see attached final version of the report, with formatting changes made, tracked changes accepted, and comments removed.

Best wishes,

[REDACTED]

Report of the Independent Adviser on the Scottish Ministerial Code into the self-referral by the First Minister Ms Nicola Sturgeon into allegations that she breached the Code in respect of meetings and discussions with the former First Minister Mr Alex Salmond between 29 March 2018 and 18 July 2018 and related matters

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11. The meeting on 7 June
12. The meeting on 14 July and telephone conversation of 18 July
13. The Procedure for handling complaints against Ministers and former Ministers and Mr Salmond's objections to it
14. The Handling of Mr Salmond's Judicial Review Proceedings and the Ministerial Code
15. The Ministerial Code: Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists
16. The Ministerial Code: Special Advisers

17. The alleged leak to the Daily Record

18. Conclusions and recommendations

The Remit for the Investigation

The remit for the investigation

The remit for the self-referral to me by the First Minister under the Scottish Ministerial Code was set out as follows by the Deputy First Minister, Mr John Swinney, in a reply to a parliamentary question in the Scottish Parliament on 3 August 2020.

“It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament

2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon’s home.

23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.

14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon’s home.

18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It is has been (sic) further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers (“the Procedure”).

Scottish Ministerial Code

The key relevant extracts from the Code are:

1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could

conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.

1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.

Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

Review any relevant documentation relating to the meetings and discussions listed above.

Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.

Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.

Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:

- i. whether the Ministerial Code is engaged regarding the meetings and discussions;

- ii. whether there has been any breach of the Code and the nature of any such breach; and

- iii. if a breach has occurred, advice on the appropriate remedy or sanction.

The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.”

In accordance with the remit I sought and received written observations from persons who included the following: the First Minister, Ms Nicola Sturgeon; the former First Minister, Mr Alex Salmond; the Permanent Secretary to the Scottish Government, Ms Leslie Evans; Ms Liz Lloyd, Chief of Staff to the First Minister; Mr Geoffrey Aberdeen, formerly Chief of Staff to the former First Minister; Mr Duncan Hamilton, Mr Kevin Pringle, Mr David Clegg, Mr Stuart Nicholson, Ms Lorraine Kay and Mr Peter Murrell. All of these witnesses gave me full co-operation and answered follow-up questions where necessary although I had no power to compel any person to cooperate with the investigation. I carried out follow-up interviews with a number of the witnesses where I considered clarifications were required.

Report and Findings

1. Brief summary of the factual background

1.1. The principal factual background to the questions raised in the remit is as follows:

Mr Alex Salmond resigned as First Minister of Scotland on 18 November 2014 and was succeeded as First Minister the following day by Nicola Sturgeon.

1.2. In December 2017 the Scottish Government adopted a new procedure entitled “Handling of harassment complaints involving current or former ministers” (subsequently referred to in this report as the Procedure) which is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

1.3. By a letter dated 7 March 2018 Mr Alex Salmond was informed that an internal investigation had been commenced under the Procedure on 17 January 2018 in respect of two formal complaints made by civil servants about his behaviour during his time as First Minister¹.

1.4. [REDACTED] Mr Geoffrey Aberdeen, former Chief of Staff to Mr Salmond, met [REDACTED] Mr Aberdeen says that the [REDACTED] informed him that two complaints had been made against Mr Salmond and named one of the complainers. [REDACTED] disputes this. Having discussed the matter with other persons Mr Aberdeen decided to inform Mr Salmond of what he had been told and did so by telephone later that week. By that time Mr Salmond had already received the letter of 7 March informing him that complaints had been made.

¹ [SP_SGHC - FN29.pdf \(parliament.scot\)](#)- page 10

1.5. On 29 March 2018 there was a meeting between the First Minister, [REDACTED] and Mr Aberdein, which took place in the First Minister's office in the Scottish Parliament.

1.6. There then followed a series of meetings and telephone conversations between the First Minister and Mr Salmond.

1.7. The first of these meetings took place in the evening of 2 April 2018 at the First Minister's home. Mr Aberdein and Ms Lloyd were present as well as Mr Duncan Hamilton who was acting as a legal adviser to Mr Salmond.

1.8. On 23 April 2018 there was a telephone conversation between the First Minister and Mr Salmond.

1.9. On 23 April 2018 there was a second telephone conversation between the First Minister and Mr Salmond.

1.10. On 7 June 2018 there was a second meeting between the First Minister and Mr Salmond during the Scottish National Party Conference which took place in Aberdeen.

1.11. On 14 July 2018 there was a third meeting between the First Minister and Mr Salmond which took place at the First Minister's home.

1.12. On 18 July 2018 there was a third and final telephone conversation between the First Minister and Mr Salmond.

2. The adoption of the Procedure for handling complaints against Ministers and former Ministers

2.1. In December 2017 the Scottish Government adopted a procedure entitled “Handling of harassment complaints involving current or former ministers.” It is described as an “internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet” and will be referred to as “the Procedure” in this report. Since 23 August 2018 the Procedure is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

2.2. The Procedure was adopted following a process of consultation involving the First Minister, the Scottish Cabinet, the Permanent Secretary and other senior officials of Scottish Government, the Chief of Staff, the Scottish Parliament, the Scottish Government’s People Directorate, as well as the Scottish Government Legal Directorate. The draft was also shared with the Cabinet Office of the United Kingdom Government and the Scottish Government Trade Unions. The process of developing this policy and the consultations involved are described in a document entitled *Response to Committee of the Scottish Government Handling of Harassment Complaints* (the Response Document) dated June 2020 prepared in response to a request from the Scottish Parliament’s Committee on Scottish Government Handling of Harassment Complaints.²

2.3. The Response Document includes the following explanations of the motive behind the policy review:-

Tackling bullying and harassment, and ensuring that the Scottish Government is a more diverse and inclusive organisation, sits at the heart of the Scottish Government’s organisational strategy, as it did at the time covered by this statement...

² Response to Committee of the Scottish Government Handling of Harassment Complaints (Response Document) see: [SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf \(www.gov.scot\)](https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/)

The 2016 People Survey³ continued to show that a significant minority of staff (10%) said they had experienced bullying or harassment, but combined with the very low number of formal complaints raised⁴, this suggested a possible lack of awareness of or confidence in existing processes and procedures. This led to the appointment in spring 2017 of a Director to champion work to tackle bullying and harassment within the organisation. The focus at that time was understanding and addressing the cultures that can allow bullying and harassment to occur and to raise awareness about the drivers for positive and inclusive cultures across the organisation.⁵

A wider societal focus on sexual harassment and sexual abuse had been increasing at the same time, and in early October 2017 reactions to sexual abuse allegations against Harvey Weinstein brought widespread exposure to the #Me Too movement, which was seeking to tackle sexual harassment and abuse by making the scale of the problem clear. A number of allegations of sexual harassment and assault were also reported in Westminster and the Scottish Parliament during October and November 2017. These issues were a matter of considerable concern across Government and the Parliament, as well as among individual MSPs, and the public at large.⁶

2.4. The review process identified a gap in the then existing procedure of dealing with sexual harassment claims, that is, that there was no mechanism for dealing with historic claims against former Ministers. This gap is described in the Response Document as follows:-

19. The review process in 2017 identified that while options were available to consider potential sexual harassment complaints about serving Ministers, no such option was available in respect of former Ministers. Those involved in the review process identified that there was a gap in the coverage in terms of having a procedure that could be deployed should any historical complaints arise in Scotland. It was recognised that a number of the allegations that had emerged at Westminster related to the actions of former Ministers during their time in office.

20. On 4 November 2017, during this review process, a Scottish Government Minister resigned his Ministerial post, following allegations made from outside the Scottish Government about his personal conduct. This example reinforced for the Scottish Government the importance of making sure that it had policies and procedures in place which were capable of responding appropriately to such allegations should they arise within the Scottish Government.

³ Scottish Government People Survey 2005 to 2018 - gov.scot (www.gov.scot)

⁴ <https://www.gov.scot/publications/foi-17-02235/>

⁵ Response to Committee of the Scottish Government Handling of Harassment Complaints, SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf (www.gov.scot) paragraph 4.

⁶ Ibid., paragraph 5

21. Following the identification of that gap in the overall framework, work was put in hand to determine the most effective way to fill it...As a result, Scottish Government officials began work on the development of a new procedure that could be applied in respect of former Ministers. The first version of the procedure was created on 7 November, which was the beginning of an iterative and collaborative drafting process. In the course of the drafting of that procedure it was decided to broaden its scope to also include serving Ministers⁷ so that there would be a single procedure that could be applied in respect of harassment complaints involving Ministers, whether current or former. This was also consistent with existing plans to review Fairness at Work. Later, following a view from the First Minister and Permanent Secretary, the procedure was amended to cover all forms of harassment, not just sexual harassment.⁸

2.5. It appears that its drafters did not consider that there might be any legal obstacle to applying the Procedure, designed and described as an internal Scottish Government procedure, to former Ministers who were no longer in a contractual or statutory relationship with Scottish Government and in respect of whom the previously existing harassment complaints procedure had already expired at the time of their retirement. I have not seen any legal advice which may have been provided to Scottish Government at the time but we do know that according to the Response Document the Scottish Government's lawyers were consulted as part of the approval process of the Procedure. The Procedure did not cover historic claims against former civil servants.

2.6. However, when complaints were laid against the former First Minister, Mr Alex Salmond, he disputed the right of Scottish Government to apply the Procedure to him and ultimately sought a judicial review against it. Among the objections which he raised to the Procedure was the claim that he could not, as a former office-holder, legitimately have been made amenable to a disciplinary procedure which had been introduced as an administrative act without any statutory or other legal basis. He challenged the retrospective effect of the Procedure. Mr Salmond also alleged procedural unfairness in the

⁷ [SP+SGHHC1+XX001+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)

⁸ [SP+SGHHC1+YY044+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](#)

operation of the Procedure. These issues are further addressed in Chapter 13 in which I discuss Mr Salmond's claim that the manner in which Scottish Government defended the case which he brought amounted to a breach of the Ministerial Code on the part of the First Minister.

2.7. It is not necessary for the purposes of my remit for me to express a view on the merits of any of Mr Salmond's claims. These were matters of Scottish law which ultimately only the Scottish courts could have decided and to an extent did decide.

2.8. So far as concerns the future of the complaints procedure in respect of former Ministers and any amendments that may be required or thought desirable in the light of the failed disciplinary proceedings against Mr Salmond a separate enquiry led by Ms Laura Dunlop QC has prepared a report which was published on 16 March 2021.

2.9. Any questions concerning any political responsibility for the events which occurred in relation to the adoption of the Procedure are matters for the Scottish Parliament and I do not express any opinion on these.

2.10. My brief is to enquire into whether the First Minister was in breach of the Ministerial Code. It has been made clear that in this I am not confined to the specific question of whether paragraphs 4.22 and 4.23 of the Code were breached but am expected to enquire whether any breach of the Code has been committed by the First Minister regarding her meetings and discussions with Mr Salmond between 29 March 2018 and 18 July 2018.

2.11. I am not aware of anything in the conduct of the First Minister in respect of the introduction of or her observance of the Procedure which could be considered to be a breach of the Code. The Response Document has set out the reasons for the introduction of the Procedure. In my opinion those reasons demonstrated a proper concern for the objective of strengthening the procedures for dealing with cases of harassment and bullying, especially sexual harassment, and it was perfectly proper and appropriate for the First Minister to lead this process and to give it every support possible. The process was supported by advice from the most senior Scottish Government officials, including the legal directorate, as well as experts in the area of human resources and the handling of complaints. In my opinion the

First Minister was entitled to rely on the advice she received. If there was any error in that advice- and I offer no opinion on that question- she cannot be regarded as personally in breach of the Ministerial Code because she relied on advice which was not correct. I accept the First Minister's evidence that at the time the Procedure was adopted she was not aware of any complaints or impending complaints against Mr Salmond. It is not part of my remit to examine the administrative arrangements for the introduction of the Procedure and I make no comment about these.

2.12. A key principle in the Procedure is to avoid any risk of political interference in complaints and in particular to exclude the First Minister from any involvement in a complaint against a former Minister. In my opinion this is a legitimate and a proportionate objective of the Procedure.

2.13. As a result of this provision the First Minister excluded herself from being informed of or involved in dealing with any complaints against former Ministers as a result of which she was not informed of the two complaints against Mr Salmond. In my opinion she was justified and acted properly in so excluding herself. Apart altogether from the provisions of the Procedure her long political association and personal friendship with Mr Salmond would have placed her in an invidious position and left herself open to accusations of bias and partiality had she allowed herself to become involved.

2.14. As already referred to above Mr Salmond has made a number of very serious allegations about the manner in which the complaints were investigated and dealt with including accusations of serious impropriety. I make no findings about the truth of any of these allegations which are the subject of enquiries by the Committee on the Scottish Government Handling of Harassment Complaints of the Scottish Parliament. I accept the evidence of the First Minister that she had no involvement in these matters. I do not consider that at present the First Minister has any responsibility under the Ministerial Code for any shortcomings or wrongdoing in the behaviour of other persons, if there were any such shortcomings or wrongdoing, in relation to matters from which she has properly excluded herself from any involvement. Later in this report I raise the question whether Ministers should bear responsibility for the activities of their special advisers.

3. The operation of the Procedure

3.1. The Procedure envisages a number of options for Scottish Government employees claiming to be victims of harassment by serving or former Ministers. “An individual may choose to raise an issue involving a current or former Minister through a number of mechanisms. These may include a senior manager of your choosing, direct to HR or a Trade Union representative.” (Paragraph 1). Options available to the staff member include asking that their concern is acknowledged but without further action being taken, or indicating that they wish to make a formal complaint (Paragraph 2). It is emphasised that at all times the staff member or the Scottish Government itself is free to make a complaint directly to the police Paragraphs 2.1, 18 and 19.

3.2. In the event that a formal complaint of harassment is received against a former Minister, the Director of People will designate a senior civil servant as the Investigating Officer to deal with the complaint. That person will have had no prior involvement with any aspect of the matter being raised. Crucially in relation to the complaints against Mr Salmond it was the failure to observe this provision which led to the success of his petition for judicial review. The role of the Investigating Officer will be to undertake an impartial collection of facts, from,(sic) the member of staff and any witnesses, and to prepare a report for the Permanent Secretary. The report will also be shared with the staff member. (Paragraph 10).

3.3. If the Permanent Secretary considers that the report gives cause for concern over the former Minister’s behaviour towards current or former civil servants the former Minister should be provided with details of the complaint and given an opportunity to respond. The former Minister will be invited to provide a statement setting out their recollection of events to add to the record. They may also request that statements are taken from other witnesses. If additional statements are collected the senior officer will revise their report to include this information and submit this to the Permanent Secretary and share with the staff member. The Permanent Secretary will consider the revised report and decide whether the complaint is well-founded. The outcome of the investigation will be recorded within the SG. The Permanent

Secretary will also determine whether any further action is required; including action to ensure lessons are learnt for the future.(Paragraph 11).

3.4. For complaints involving a former Minister who is a member of the Party of the current Administration, the Permanent Secretary will inform the First Minister both in this capacity and in the capacity of Party Leader, of the outcome when the investigation is complete. The First Minister will wish to take steps to review practice to ensure the highest standards of behaviour within the current Administration (Paragraph 12).

3.5. The Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and how a complaint is dealt with, and to ensure the impartiality of the process. In my opinion this is a legitimate objective of the scheme.

3.6. Chapter 13 below deals in more detail with certain aspects of how the procedure was adopted and its operation in relation to Mr Salmond.

4. Meetings between [REDACTED] and the former Chief of Staff [REDACTED]

4.1. There were meetings [REDACTED] and Mr Geoffrey Aberdein. He had been Chief of Staff (the most senior special adviser) from 2011 to December 2014 during Mr Salmond's time as First Minister and had left government service when Mr Salmond resigned as First Minister following the SNP's defeat in the independence referendum. [REDACTED]

4.2. [REDACTED]

4.3. [REDACTED]

4.4. [REDACTED] In the light of the "me too" movement, the increased focus on issues of harassment and in particular historic harassment, and the creation of a new procedure in government to address such issues, [REDACTED] if there was anything of that nature, from his time as Chief of Staff, [REDACTED]

4.5. [REDACTED] had remarked the previous week that the content of an official briefing provided for First Minister's Questions on the issue of sexual harassment had changed. Where the briefing had previously given a clear answer of "No" to the question of whether there had been any complaints about current or former ministers, and

had stated that fewer than five cases of sexual harassment had been reported in the civil service, the colleague had noticed that both of those statements had been removed, and a line about concerns having been raised and being considered in line with procedures was now the line that should be used. That line could have referred to either staff or ministers and did not state that an investigation was underway into a former minister in general or into Alex Salmond in particular.

4.6. [REDACTED] admits to having been aware at that time of growing rumours about Mr Salmond but claims at that stage not to have been aware of actual complaints made against him. [REDACTED]

[REDACTED]

4.7. Whilst discussing “me too” in general, [REDACTED] described asking Mr Aberdein whether he was aware of anything of concern. [REDACTED] said Mr Aberdein had no knowledge in relation to any other minister or former minister, but referred in general terms to two alleged incidents involving Mr Salmond. One was not sexual in nature.

4.8. In relation to the incident that was sexual in nature [REDACTED] gave a general description of the incident which he presented as being in his view a minor incident, [REDACTED] says that he named the person concerned and that he did not seem to think it was a particularly significant incident. [REDACTED]

[REDACTED]

4.9. The conversation about “me too” also covered a 13 November 2017 allegation on Sky News that female staff at Edinburgh airport had expressed concern to airport managers about what they regarded as “inappropriate behaviour” which was not specified in the Sky News report. Mr Salmond was reported as “strongly denying” any wrongdoing and nothing more was ever heard of this matter. The alleged Edinburgh Airport incident is further discussed in Chapter 5 below. [REDACTED] also referred to “jungle drums” in the media about Mr Salmond ever since the “me too” movement became prominent in October 2017. A number of [REDACTED] had

apparently been approached on a number of occasions by reporters to ask if there had ever been complaints about ministers in general and Mr Salmond in particular.

4.10. According to [REDACTED] suggested that Mr Salmond would not cope well with such allegations, but said he wasn't aware of anything further, and that he and Mr Salmond weren't really in touch that much anymore and there was no other discussion on the issue.

4.11. Mr Aberdeen in his account makes no mention of discussing any of these matters [REDACTED] He states that any reference to Alex Salmond in that first discussion was in the context of media coverage, particularly concerning Alex Salmond's decision to host a show on Russian television around that time which was the subject of much controversy. It is agreed by both participants that this subject was indeed discussed at this meeting.

4.12. Mr Aberdeen, however, believes that the main purpose of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.13. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.14. [REDACTED] says that this resulted from [REDACTED] increasing concerns that whether or not there was currently any investigation into Mr Salmond, it was possible there could be an investigation in the future as it was clear there could be something to investigate. [REDACTED]
[REDACTED]

[REDACTED]

4.15. [REDACTED] claims that in order [REDACTED] indicated that [REDACTED] had a reason to believe there might be a complaint and it could be about Mr Salmond. [REDACTED] says that this was an overstatement [REDACTED]

[REDACTED] says that Mr Aberdein took this to mean that someone within government had given [REDACTED] information about a complaint and began to name individuals who might have done so. He suggested that he would phone some contacts who had previously worked with him who would tell him if there was a complaint. [REDACTED] then denied knowing if there was a complaint and advised against making such calls as it seemed highly improper. If this is indeed what happened it would be hardly surprising that Mr Aberdein misunderstood what [REDACTED] was saying.

4.16. Mr Aberdein has a very different recollection of this meeting. He states that it is his clear recollection that [REDACTED] informed him that the Scottish Government had received official complaints about Mr Salmond. He says that [REDACTED] denied knowing the full details of the complaints but did tell him there were two individual complainers and named one of them. [REDACTED]

4.17. If it were a simple matter of comparing the two accounts it would not be possible to be completely certain whose account is correct, although Mr Aberdein's account is more straightforward than the rather complicated account given by [REDACTED]. It is difficult to see how there can have been a misunderstanding as to what was actually said despite [REDACTED] elaborate explanation of how Mr Aberdein could have misunderstood what [REDACTED] said.

4.18. However, whether it is the case that [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] There is no evidence to suggest that the First Minister was aware of Mr Aberdeen's version of events before the end of March. If Mr Aberdeen's account is correct I think it quite likely in any event that [REDACTED]
[REDACTED]

4.19. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] would undoubtedly have been well aware that under the Procedure harassment complaints were required to be treated in confidence and the First Minister was required not to be involved in any way in dealing with such complaints. It seems to me unlikely that the First Minister would have welcomed being potentially compromised by having rumour or gossip about such a complaint [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.20. Mr Aberdeen states that it was [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Furthermore, the information which Mr Aberdeen later gave Mr Salmond turned out in fact to be correct.

4.21. The same day Mr Aberdeen telephoned a former civil servant with whom he was friendly to tell her what had happened. She has made a statement confirming this. Later that day Mr Aberdeen contacted Mr Kevin Pringle and Mr Duncan Hamilton by telephone to inform them of

what he had been told about the complaints and to seek their advice about what he should do. They advised him to tell Mr Salmond. Mr Pringle has confirmed this account of what happened. Mr Hamilton initially declined to make a statement to me in view of his professional relationship with Mr Salmond but subsequently made a statement confirming Mr Aberdeen's statement when released from his obligation of confidentiality by Mr Salmond. On 9 March and again on 11 March Mr Aberdeen informed Mr Salmond by telephone of what [REDACTED] [REDACTED] had told him. In view of the fact that Mr Aberdeen informed these four individuals of the conversation promptly I believe that Mr Aberdeen's account of what was said by [REDACTED] the existence of complaints and the identity of a complainer is credible.

4.21. In the absence of any evidence that [REDACTED] the First Minister about either the existence or the contents of the complaints, then the discussions between Mr Aberdeen and [REDACTED] do not in my opinion constitute any breach of the Ministerial Code by the First Minister. [REDACTED]

[REDACTED] It remains the fact that the name which Mr Aberdeen says was given to him was in fact the name of one of the complainers against Mr Salmond. [REDACTED]

5. When did the First Minister become aware that there were allegations against Mr Salmond?

5.1. The First Minister had been aware of the report on Sky News on 13 November 2017 referred to in paragraph 4.9 above. The report led to her having a “lingering concern” about Mr Salmond. She described it in an interview with me in the following terms:

Round about the beginning of November 2017, just to put you in the picture, as you will recall this was at the time the whole world really was talking about the “me too” allegations, and, you know, organisations, governments, parliaments everywhere were trying to make sure they had the right processes in place. And this was around about the time we got a query from Sky News. By “we” I mean the SNP, not the Scottish Government, and that was about allegations that had been made by people at Edinburgh airport about conduct on the part of Alex Salmond.

At that point I spoke to Mr Salmond about it. You know as far as I was aware at that point we were about to see a story appear on Sky News. I spoke to him the morning after we got the press query. He seemed pretty shaken by it at that point and said he had to get to the bottom of what it was. I spoke to him again later that day when he appeared much more bullish. But the following day the Permanent Secretary had indicated to me that he had been, or his lawyers, or a bit of both, I’m not sure, had been contacting people in the Scottish Government effectively asking people that he had worked with or that might have been with him going through Edinburgh Airport to back him up and that that has caused a bit of, some disquiet on the part of those people who had been contacted. And she asked me to ask him to stop that, which I did, and he said he already had all the information he needed. So I suppose the two things that just left me with a lingering concern was the fact that- and I struggle really to go beyond what I’m about to say to you- that his contacting people in the Scottish Government had appeared to almost stir something, a hornet’s nest had been stirred kind of thing. That was the impression I got. And then he said something to me about, you know, you can’t have stories like this running because you get one and the flood gates will open kind of thing, which he immediately qualified and said “oh no, that’s not to say that I think there is anything there”. But it was just the combination of things left me with a “is there something that is about to come forward about Mr Salmond’s behaviour?” It wasn’t something I thought about every day, or worried me everyday, but it was there in the back of my mind, and that I suppose is the back drop to what unfolded at a later stage.

5.2. Nothing more seems to have been reported about the Edinburgh Airport incident subsequently. As already discussed the First Minister says she first became aware of the fact that complaints against Mr Salmond under the Procedure had been made at the meeting on 2 April discussed below. Mr Aberdeen believes he told the First Minister of the

existence of complaints on 29 March; he did not have details of these complaints at that time. (See paragraph 6.10 below).

6. The meeting on 29 March 2018

6.1. Sometime following a call to Mr Salmond early in March Mr Salmond intimated to Mr Aberdeen that he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. Mr Aberdeen cannot be precisely certain when and how this was arranged but believes he [REDACTED] through a phone call.

6.2. Thereafter, he believes he may [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6.3. Mr Salmond's account of how the first meeting came about is that he was contacted by phone on or around 9 March 2018 and again the following week by his former Chief of Staff. The purpose of the contact was to tell Mr Salmond [REDACTED]
[REDACTED]

6.4. Mr Aberdeen said that at [REDACTED]
[REDACTED] had informed him of two complaints concerning Mr Salmond under a new complaints process introduced to include former Ministers and named one of the complainers to him. At that stage [REDACTED]
[REDACTED]

6.5. On receipt of the letter from the Permanent Secretary first informing Mr Salmond of complaints on 7 March 2018 he had secured Levy and McRae as his solicitors and Duncan Hamilton, Advocate and Ronnie Clancy QC as his counsel.

6.6. Mr Salmond and his legal advisers then identified what they considered to be a range of serious deficiencies in the Procedure. There was no public or parliamentary record of it ever having been adopted. In addition they believed that it contained many elements of procedural unfairness and substantive illegality. In their opinion there was an obvious and immediate question over the extent to which the

Scottish Government even had jurisdiction to consider the complaints. In relation to former Ministers (in contrast to current Ministers) the Procedure offered no opportunity for mediation. The previous complaints procedure with which Mr Salmond had been familiar ('Fairness at Work') was based on the legislative foundation of the Ministerial Code in which the First Minister was the final decision maker. He wished to bring all of these matters to the attention of the First Minister. He did not know at that stage the degree of knowledge and involvement in the policy on the part of [REDACTED] the First Minister [REDACTED]

6.7. [REDACTED]

6.8. On 29 March 2018 there was a meeting between the First Minister and Geoff Aberdeen, former Chief of Staff to Mr Salmond, which took place in the First Minister's office in the Scottish Parliament. [REDACTED]

6.9 The First Minister described in an interview the circumstances in which the meeting was held. [REDACTED]

[REDACTED] Mr Aberdeen had recently made contact to ask if the First Minister would agree to see Mr Salmond because there was an issue he wanted to talk to her about and he was in a state of great distress. [REDACTED] said Mr Aberdeen might be in the Parliament on 29 March. The First Minister appears to have been told that a civil servant colleague, somebody that Mr Aberdeen had worked closely with was having a birthday celebration in the office and Mr Aberdeen might be attending and if so he might try to grab a word with her. In fact Mr Aberdeen did attend the Parliament that day.

JH: and then was he brought into your office? Was this just a discussion in the corridor so to speak?

FM: No no, we had been outside, just I don't expect you to visualise my office in Parliament but there is you know outside my office is where civil servants, special advisors work, so the member of staff whose birthday it was, civil servant, incidentally, we were outside there doing the birthday cake, singing happy birthday and Geoff had asked for a word and we went in to my office. Again, just to be clear, that would not have been the first time since Geoff had left as Chief of Staff, after I became First Minister that he had been in the office for something and had stepped in to my room for a chat. We were friends, you know, we are friends. And so he stepped into my room. From memory, I don't think was a particularly long conversation but it took place in my office.

JH: And did he give you any details at that stage about what it was about?

FM: Not, and this is where, so a combination of what I remember about this meeting and then what actually happened at my house on 2 April which we will come on to, make me very firm to the best of my recollection. Remember, this 29 March meeting had never been a significant event in my mind. To the best of my recollection no he did not give me details, it was very much he wanted to get me to agree to see to see Alec. Alec and I were very close but we hadn't been speaking as much as normal, you know I was First Minister, he was off doing other things, he had lost his seat. He wanted me to see Alec and agree to a meeting. He was telling me that he was very worried about Alec, a lot of the discussion was about Alec's state of mind. You know he seemed to be indicating that he had never heard Alec be quite so upset about anything previously, that he was very distressed, that he thought he might be about to resign his SNP membership because of the nature of the issue he was upset about. I do believe that I, partly down to what he was telling me, partly down to the Sky lingering concerns, that it was in the realms of a potential concern or complaint about sexual misconduct. But, you know in my mind, and this was not unusual; Alec and I have worked incredibly closely for a long time, if I was being told he wanted to tell me something, in my mind I would have had to see him and hear what he wanted to tell me. That's basically, I had a general sense that it was something serious, something in the realms of a sexual complaint potentially, and he was very upset about it but I agreed, we didn't set the date of the meeting with Alec at that point, that was [arranged] over the weekend. But I was very clear, I was agreeing to see Alec as a friend, I was being told he was in a state of considerable distress, but also as the leader of the SNP, I was being led to believe he was on verge of resigning his membership of the party.

6.10. Mr Aberdeen agrees that the initiative for this meeting came from his making an approach on behalf of Mr Salmond. However, he is quite clear that he came to the Parliament on 29 March for the purpose of meeting the First Minister. He says he had not come in for the purpose of attending the birthday party of which he had been unaware in advance of his arrival in the Parliament. However, he did join the celebrations. The First Minister also briefly joined the party and they stepped into her office to discuss Mr Aberdeen's concerns. The First Minister says that during the conversation he raised an incident allegedly involving Mr Salmond. It appears that this may have been the

incident discussed by [REDACTED] and Mr Aberdeen [REDACTED], concerning which it is disputed who said what to whom. The First Minister says that he spent most of the meeting seeking to persuade her to meet Mr Salmond. She does not believe the discussion took longer than ten minutes, though Mr Aberdeen was in parliament for a longer period, socialising with former colleagues. Mr Aberdeen says that he gave a brief account of the complaints against Mr Salmond to the First Minister. Contrary to what Mr Salmond told the Parliamentary Committee he did not give details of the conduct alleged to have been engaged in by Mr Salmond as he did not in fact know the details. He agrees the meeting was a short one lasting ten or fifteen minutes. The meeting on 2 April resulted from that short conversation.

6.11. I find it very hard to know what to make of this story about the birthday party. Mr Aberdeen's account to me was very convincing. Equally the First Minister seemed both convinced by and convincing in her account. It may be that [REDACTED]

It may simply have been [REDACTED]

However, this is speculation and it would probably not be right to place too much significance on the matter.

7. The First Minister's failure to refer to the meeting of 29 March in her statement to the Scottish Parliament on 8 January 2019

7.1. On 8 January 2019 the First Minister made a statement to the Scottish Parliament concerning the Procedure for Handling Complaints Involving Current or Former Ministers following the conclusion of Mr Salmond's judicial review proceedings which the Scottish Government had withdrawn their opposition to⁹.

7.2. In the course of that statement she disclosed for the first time the series of meetings and telephone calls in which she had held discussions with Mr Salmond as follows:-

In the past, questions have also been raised about meetings that I had with Alex Salmond during the investigation, so I want to address that issue now. I met him on three occasions: on 2 April 2018 at my home in Glasgow; on 7 June 2018 in Aberdeen, ahead of the Scottish National Party conference; and on 14 July 2018, at my home. I also spoke to him on the telephone on 23 April and 18 July 2018. I have not spoken to Alex Salmond since 18 July. On 2 April, he informed me about the complaints against him, which—of course—in line with the procedure, the permanent secretary had not done. He set out his various concerns about the process. In the other contacts, he reiterated his concerns about the process and told me about proposals that he was making to the Scottish Government for mediation and arbitration. However, I was always clear that I had no role in the process. I did not seek to intervene in it at any stage—nor, indeed, did I feel under any pressure to do so.

7.3. The first and most obvious point to note is that this is technically an accurate list by the First Minister of the discussions she actually held with Mr Salmond. What has been suggested, however, is that the omission to refer to the meeting with Mr Aberdeen on 29 March during her statement to the Scottish Parliament created an incomplete and therefore misleading account.

7.4. It is agreed by all concerned in the meeting of 29 March that Mr Aberdeen's purpose was to persuade the First Minister that she should meet Mr Salmond and to agree the necessary arrangements if she decided to do so. Clearly Mr Aberdeen was simply a go-between and any information which he could convey was at second hand and would be superseded by whatever Mr Salmond could say at first hand if a meeting took place. The 29 March meeting, according to all participants, took no more than 10 or 15 minutes.

⁹ Official Report 8 Jan 2019 (parliament.scot)

7.5. The First Minister recalls that [REDACTED] the meeting of 29 March [REDACTED] and she understood that [REDACTED] the possibility of allegations emerging against Mr Salmond (see paragraph 6.9 above). This was around the same time that a former Scottish Government minister had resigned from the SNP over allegations against him, so such matters were topical. The First Minister understood that [REDACTED] [REDACTED] to see if the First Minister would meet Mr Salmond, as there was a specific matter that he wanted to discuss with her. Mr Aberdein was said to have indicated [REDACTED] Mr Salmond was in a state of distress and considering standing down from the SNP. [REDACTED]
[REDACTED]
[REDACTED]

7.6. According to the First Minister's recollection at the 29 March meeting Mr Aberdein was primarily seeking to persuade her to meet Mr Salmond. Her account of the meeting is set out at paragraph 6.9 above. She recalls that the discussion covered the fact that Alex Salmond wanted to see her urgently about a serious matter, and she thinks it did cover the suggestion that that matter might relate to allegations of a sexual nature. The impression she had at this time was that Mr Salmond was in a state of considerable distress, and that he might be considering resigning his party membership. However, while she suspected the nature of what he wanted to tell her, it was Alex Salmond himself who told her on 2 April that he was being investigated under the Procedure and also gave the detail of the complaints against him. Mr Aberdein agrees that the meeting was a very brief one, lasting no longer than fifteen minutes. Mr Aberdein says that he relayed to the First Minister a broad summary of the complaints as described to him by Mr Salmond. In describing what Mr Salmond had previously told him he refers to him in the course of a telephone call having "relayed to me, in very high level, a summary of the complaints." By "in high level" Mr Aberdein meant "not in detail"- indeed he made it clear to me in discussion that he was not aware of the detail. It is clear that the information given by Mr Salmond to the First Minister on 2 April was much more detailed than that relayed by Mr Aberdein on 29 March.

7.7. The First Minister says due to the nature of the information shared with her at the meeting of 2 April it was that meeting rather than the 29 March meeting with Mr Aberdein that has always been significant in her mind. She thinks that the assumption in her mind at the time of the 29 March discussion was that any issues of alleged sexual conduct against Mr Salmond would be related to the alleged incident at Edinburgh Airport which had been raised by Sky News in the query made to the SNP in early November 2017 and which concerned allegations of misconduct on the part of Alex Salmond and are discussed at paragraphs 4.9 and 5.1 above. She spoke to Mr Salmond about the allegations at the time. He denied them and, as it happened, Sky did not subsequently run a story about it. Since the identity of the individuals making the allegations was not made known to the SNP and they did not approach the SNP directly, there was no further action that it would have been possible for the SNP to take. However, even though Mr Salmond assured her to the contrary, all of the circumstances surrounding this episode left the First Minister with a lingering concern that allegations about Mr Salmond could materialise at some stage.

7.8. [REDACTED] recalled a reference by Mr Aberdein to an incident Mr Salmond had apologised for some time previously. However, this would have meant nothing to the First Minister as she had not been aware of any such incident at the time. That reference, however, later made sense to the First Minister in the light of what Mr Salmond subsequently told her on 2 April.

7.9. Regarding her failure to recall the 29 March meeting when addressing the Scottish Parliament on 8 January 2019 the First Minister says that it is obviously not possible for anyone to be certain of the reasons for forgetting an event. She thinks the reason this meeting was not engraved in her mind (beyond the fact that it was an unscheduled meeting in the middle of a busy day) are as set out in paragraphs 7.4, 7.5, 7.6 and 7.7 above. She has expanded upon these comments as follows. Firstly, by the time she met with Mr Aberdein, she already had what she described as a 'lingering concern' that allegations might emerge about Mr Salmond. This was as a result of the Sky media query in November 2017. In other words, the meeting was not the first time possible allegations about Mr Salmond had been raised with her. Had it been, her memory might have been more vivid.

But the second, and in her opinion perhaps more relevant factor is that her meeting with Mr Salmond himself a few days later on 2 April was so significant. It was then that he told her the details of the actual complaints against him and his response to them. She thinks it is because this was such a shock to her that the earlier meeting was overwritten in her mind.

7.10. It is regrettable that the First Minister's statement on 8 January 2019 did not include a reference to the meeting with Mr Aberdeen on 29 March. In my opinion, however her explanation for why she did not recall this meeting when giving her account to Parliament, while inevitably likely to be greeted with suspicion, even scepticism by some, is not impossible. What tilts the balance towards accepting the First Minister's account for me is that I find it difficult to think of any convincing reason why if she had in fact recalled the meeting she would have deliberately concealed it while disclosing all the conversations she had had with Mr Salmond. Furthermore, given that the meeting was with Mr Aberdeen who was expected to report it back to Mr Salmond it would have been naive to think that the meeting would remain secret given the First Minister's poor relationship with Mr Salmond at that point.

7.11. Mr Salmond strongly disputes the First Minister's contention that she forgot the meeting¹⁰. He argues that:-

In her written submission to the Committee, the First Minister has subsequently admitted to that meeting on 29 March 2018, claiming to have previously 'forgotten' about it. That is, with respect, untenable. The pre-arranged meeting in the Scottish Parliament of 29 March 2018 was "forgotten" about because acknowledging it would have rendered ridiculous the claim made by the First Minister in Parliament that it had been believed that the meeting on 2 April was on SNP Party business (Official Report 8 & 10 January 2019) and thus held at her private residence. In reality all participants in that meeting were fully aware of what the meeting was about and why it had been arranged. The meeting took place with a shared understanding of the issues for discussion - the complaints made and the Scottish Government procedure which had been launched. The First Minister's claim that it was ever thought to be about anything other than the complaints made against me is wholly false.

The failure to account for the meeting on 29 March 2018 when making a statement to Parliament, and thereafter failing to correct that false representation is a further breach of the Ministerial Code. Further, the repeated representation to the Parliament of the meeting on 2 April 2018 as being a

¹⁰ [Alex Salmond \(5\) \(further redactions 23.02.2021\).pdf \(parliament.scot\)](#)

'party' meeting because it proceeded in ignorance of the complaints is false and manifestly untrue. The meeting on 2 April 2018 was arranged as a direct consequence of the prior meeting about the complaints held in the Scottish Parliament on 29 March 2018.

34. The First Minister additionally informed Parliament (Official Report 10 January 2018) that 'I did not know how the Scottish Government was dealing with the complaint, I did not know how the Scottish Government intended to deal with the complaint and I did not make any effort to find out how the Scottish Government was dealing with the complaint or to intervene in how the Scottish Government was dealing with the complaint.'

I would contrast that position with the factual position at paragraphs 20 and 27 above. The First Minister's position on this is simply untrue. She did initially offer to intervene, in the presence of all those at the First Ministers house on 2 April 2018. Moreover, she did engage in following the process of the complaint and indeed reported the status of that process to me personally.

7.11. It is for the Scottish Parliament to decide whether they were in fact misled. Mr Salmond overstates the case when he refers to "the repeated representation to the Parliament of the meeting on 2 April 2018 as being a 'party' meeting". The Official Reports of the Scottish Parliament for 8, 10 and 17 January 2019 contain no such claim by the First Minister. She did deny that the meetings were Government meetings which she explained on the basis that she had no responsibility for operating the Government's harassment complaints procedure and indeed no knowledge of the complaints except for what Mr Salmond told her. She claims that she confined her role in these meetings to explaining that she could not and would not become involved in the matter. Mr Salmond claims that she agreed to intervene. The fact is that she did not intervene. Mr Salmond has also claimed that her failure to intervene to prevent what he saw as an illegal procedure was also a breach of the Ministerial Code.

7.12. The failure to disclose the meeting of 29 March with Mr Aberdeen to the Scottish Parliament on 8 January 2019, although the First Minister's statement was technically a correct statement of the occasions on which she had met Mr Salmond nonetheless resulted in an incomplete narrative of events. For the reasons stated above I accept that this omission was the result of a genuine failure of recollection and was not deliberate. That failure did not therefore in my opinion amount to a breach of the Ministerial Code.

8. The meeting of 2 April 2018

8.1. The following facts concerning the meeting of 2 April are not in dispute: the meeting took place in Ms Sturgeon's home in Glasgow. The meeting took place at Mr Salmond's request and with the First Minister's agreement. Present in the house were the First Minister, her Chief of Staff, Ms Lloyd, Mr Salmond, and Mr Aberdein. Mr Duncan Hamilton, an advocate retained on behalf of Mr Salmond, was also present; his attendance had not been notified to the First Minister in advance. Mr Peter Murrell, the husband of the First Minister and Chairman of the SNP arrived home while the meeting was still taking place but took no part in it.

8.2. The meeting was in two parts, a discussion between the First Minister and Mr Salmond on their own followed by a meeting at which all five persons were present. The first part of the meeting was in private because Mr Salmond initially asked to see the First Minister privately. No permanent civil servant was present at any part of the meeting. The meeting was a lengthy one; the First Minister estimates between one and two hours; Mr Aberdein describes the first part of the meeting at which only the First Minister and Mr Salmond were present as lengthy.

8.3. The First Minister has stated that at the meeting Mr Salmond told her that complaints against him were being investigated under the Procedure. At that meeting, he showed her a copy of the letter he had received informing him of the complaints. He shared the details of the complaints made against him under the Procedure with her and gave her his response to them.

8.4. Notwithstanding the suspicions she had harboured going into this meeting, the First Minister describes herself as shocked and upset by the reality of what she read. Mr Salmond gave her his reaction to the complaints. In the main he denied them, though in relation to one matter he said that he had previously apologised and considered it out of order for it to be raised again, and said that it was his intention to seek a process of mediation between himself and the complainers. It was also clear, contrary to what the First Minister had anticipated, that he did not intend to resign his party membership or do anything to make the matter public at that stage.

8.5. The First Minister states that as it was clear to her then that these were complaints under the Scottish Government's Procedure, she knew that she had no role in the matter and would not be made aware of it by the Permanent Secretary until any investigation concluded. She states that she was clear to Mr Salmond that she would not intervene.

8.6. The First Minister states that she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. The principal reason for this was the "lingering suspicion" she had formed following the alleged incident reported by Sky News on 13 November 2017 and referred to in paragraph 9.1. above. She says that her discussion with Mr Aberdeen on 29 March 2018 may have contributed to her suspicion.

8.7. In answer to the question why, if she suspected the nature of what Mr Salmond wanted to speak to her about on 2 April, she nevertheless agreed to the meeting, she states that the reasons were both personal and political. She thought Mr Salmond might be about to resign from the SNP and that, as a result of this or other aspects of how he intended to handle the matter he was dealing with, the party could have been facing a public/media issue that the SNP would require to respond to. As Party Leader, she considered it important that she knew if this was in fact the case in order that she could prepare the party to deal with what would have been a significant issue. As to the personal aspect Mr Salmond has been closer to her than probably any other person outside her family for the previous 30 years, and she was being told he was very upset and wanted to see her personally.

8.8. Although I accept the First Minister's statement that her motivation for agreeing to the meeting was personal and political, and she may have sought to underscore this by hosting it in her private home with no permanent civil servant present and no expenditure of public money, it could not in my opinion be characterised as a party meeting. Members of political parties do not ordinarily attend party meetings accompanied by their lawyers, and when the First Minister's husband, who is chairman of the SNP, arrived home, he did not join the meeting. In fairness the First Minister did not seek to make any case to me that this was a party meeting.

8.9. The First Minister says that she took no action as a result of the meeting. Indeed this appears to be confirmed by Mr Salmond one of whose complaints is precisely that the First Minister failed to take the action he requested. In effect his request was to alter or to override the Government policy and procedure in respect of handling harassment cases which had been agreed in late 2017. It is difficult not to conclude, therefore, that an aspect of the meeting concerned this Government procedure, although of course this was a Government procedure from which the First Minister was excluded by its express terms as a result of the policy adopted in 2017 and she claims that her involvement was only to explain why she could not and would not become involved..

8.10. However, in his submission Mr Salmond strongly argues that the First Minister did in fact agree to intervene in the process to secure a mediation process to resolve the complaints. He claims that she gave an assurance to that effect on 2 April. His account is supported by his advocate, Mr Duncan Hamilton, who states that he has a clear recollection that the First Minister said that “If it comes to it I will intervene”. Mr Aberdeen did not hear this statement made but he had absented himself from the room at one point and he points out that it could have been said in his absence.

8.11. The First Minister, in her written statement, says that she was clear to Mr Salmond that she would not intervene. When appearing before the enquiry in the Scottish Parliament in reply to a question from Mr Stuart McMillan as to why she said to Mr Salmond “I want to assist”, which he took to mean that she would intervene to advocate for mediation in the first instance, she replied:-

I want to paint a picture—or rather, give people the context. I was sitting in my house. We are talking about 2 April, which was Easter Monday. The man whom I had worked with, been friends with and in my earlier years had looked up to so much had just told me something pretty shocking. My head was spinning and I was dealing with complicated emotions. When you are sitting with a friend who is saying, “I’m facing this terrible situation,” it is entirely possible that you say things like, “I’d love to help if I could”—people say that kind of thing. This was a human situation. We are talking about it now as a political scrutiny situation, which is absolutely proper, but in the moment, it was a human situation between two people who knew each other really well.

As I think that I have described to Andy Wightman, from the minute I saw the letter, I knew that it would not be appropriate for me to intervene. I was probably trying to soften that for him. From his accounts, maybe I softened that too much. In real time, I was also thinking, “Is there anything I have to do?”

Do I have to report this to anybody?” All of that was going through my head as we were having that discussion. However, I did not intervene because, for the reasons that I set out very vehemently to Margaret Mitchell, I did not think that that would have been appropriate for me to do¹¹.

In reply to a question from Mr Alex Cole-Hamilton the First Minister did not deny that she had made the statement attributed to her by Duncan Hamilton:-

I made clear to him [i.e. Mr Salmond] that I had no role in the process. He could see that himself, because, I think, he had a copy of the process. I think that I made it clear that I would not intervene. Given what he has said and what Duncan Hamilton has said, there is a question about whether, in discussing with him what he thought should happen, I made that clear enough. If Duncan Hamilton says that I said something like that, there is, in a sense, disputed evidence. However, when I look at the things that I am being accused of saying, they do not strike me as being, “Yeah, yeah, I’m going to intervene.” Rather, they are things like, “Well, I’ll help if it is appropriate or if it comes to it”—if it comes to what? I do not know. The permanent secretary has got to tell me. Under the procedure, the permanent secretary would not tell me until the end. It sounds as if I was not actually thinking of intervening. However, if Alex left there with the impression that I was, all that I can say is that that, clearly, was not the impression that I wanted to give him.

A crucial part in this is that I did not intervene. It has been put to me today that I should have intervened, but I did not. Whatever way I expressed myself and whatever discussions I took part in, I did not intervene in the process¹².

As the First Minister has repeatedly, and correctly, stated, she did not intervene. Indeed, her failure to intervene has been a constant source of complaint from Mr Salmond who has even suggested that her failure to do so may itself have been unlawful as contrary to the Scotland Act (see his text message of 3 June referred to in paragraph 10.2 below). If Mr Salmond was entirely confident that he had in fact secured an unequivocal commitment from the First Minister to intervene one might have expected him to follow it up and to press home his advantage. In fact, however, the next communication between the First Minister and Mr Salmond did not occur until three weeks later.

¹¹ [Official Report \(parliament.scot\)](#)- page 120

¹² [Official Report \(parliament.scot\)](#)- page 120

9. The telephone call of 23 April

9.1. The First Minister has stated that after the meeting of 2 April it was not her intention to meet with or speak to Mr Salmond about the matter again. Mr Salmond sent her a message on 22 April with a request to speak to her by telephone. When he did so she again thought it possible that he was intending to respond in a way that would make the matter public. She explains that in her opinion it would have been very much in character for him to have made a bold public declaration about the complaints made against him in order to, as he would see it, 'take control of the story'. This could have been along the lines of 'I'm standing down from the SNP while I fight to clear my name' or even a partial *mea culpa* 'I've made mistakes, but I'm not guilty of what I am accused of'. Back then, this is what she assumed he would eventually do. As Party Leader, she was keen not to be blindsided by such a development, and she explains that is why she agreed to the call.

9.2. The First Minister spoke to Mr Salmond by telephone on 23 April (the substantive call took place early in the evening after a call in the morning had to be aborted due to a poor signal). Her Chief of Staff was in the room with her during this call but not on the line. The First Minister thinks the call lasted around 10 to 15 minutes in total. During the call Mr Salmond asked her to advise the Permanent Secretary that she knew of the investigation and to persuade the Permanent Secretary to accede to Mr Salmond's request for mediation. She says she told him emphatically that she would not do so. Mr Salmond says that he phoned the First Minister by arrangement on WhatsApp to say that a formal offer of mediation was being made via his solicitor to the Permanent Secretary that day.

9.3. Mr Salmond seems during the course of his discussions with the First Minister to have referred to mediation and arbitration in two distinct contexts. Initially he referred to possible mediation between himself and the complainers. At a later stage he was referring primarily to a possible process of arbitration concerning the issues which finally gave rise to his legal proceedings against the Scottish Government. However, the absence of a provision in the Procedure for mediation between the complainers and a former Minister accused of harassment was always a subject of complaint from him. The First Minister states that she was in any event clear that she would not

become involved in making representations so from her point of view that distinction does not seem to have assumed any particular importance.

10. The decision to inform the Permanent Secretary

10.1. Mr Salmond sent a further message to the First Minister on 31 May seeking a further meeting. The First Minister states that she initially resisted this request. She says that she still thought it possible that Mr Salmond might 'go public', but the content of their telephone conversation on 23 April and the tenor of his text messages to her on 31 May and 1 June made her think this was unlikely at that stage. Therefore, her intention was to decline this meeting request. The text messages between them show him wishing to provide her with "material" and that she, without outrightly declining to meet, was finding reasons why a meeting was not convenient, which reasons may well have been perfectly genuine. In a text message on 1 June the First Minister wrote "I'm not at home at weekend and in Aberdeen on Monday. In any event, I'd prefer a quick chat first to understand the purpose of giving me material. We've already spoken about why I think me intervening is not right thing to do. Happy to talk on what's app at some point over weekend." Mr Salmond describes this as the opposite of the assurance she gave on 2 April.

10.2. On 3 June Mr Salmond sent the following message:-

My recollection of our Monday 2 April meeting was rather different. You wanted to assist but then decided against an intervention to help resolve the position amicably. Now is different. I was intending to give you sight of the petition for JR drafted by senior counsel. You are a lawyer and can judge for yourself the prospects of success which I am advised are excellent. This will follow ANY adverse finding against me by the PS in a process which is unlawful. You are perfectly entitled to intervene if it is brought to your attention that there is a risk of your Government acting unlawfully in a process of which you had no knowledge. Indeed it could be argued that is your obligation under the Scotland Act is to ensure that all government actions are consistent with Convention undertakings

The JR will be rough for me since the hearing will almost certainly be made public but at least I will have the opportunity to clear my name and good prospects of doing so - but for the Government? One further thing to consider. Thus far we have been able to confine evidence offered to the general (and mostly ridiculous) matters. This has had the benefit of keeping everything well clear of current administration. When we go to Court we will have to produce evidence to demonstrate prior process (which incidentally the PS has admitted!).

If you want to discuss privately then I can come to you in the North East on Monday.]

10.3. The First Minister states that the tone and content of this message changed her view of the matter. She explains that the tone of it seemed almost to her intimidatory and the content made clear he was considering legal action. As a result, she decided to inform the Permanent Secretary. The permanent Secretary confirms that she did so on 5 June following up with a letter on 6 June which is set out below.

10.4. The First Minister agreed to meet Mr Salmond and did so on 7 June. There is nothing in the tone of the messages arranging the meeting to indicate her change of opinion, but on the other hand, there was no reason why she would have disclosed this to Mr Salmond in advance of the meeting.

10.5. The First Minister states that her decision to inform the Permanent Secretary was not one she took lightly. Her earlier decision not to inform the Permanent Secretary of her knowledge, which she says had also not been taken lightly, had been intended to protect the integrity and confidentiality of the process.

10.6. The First Minister decided to make it known to Mr Salmond that she had informed the Permanent Secretary, and to make clear again that she would not intervene as he wanted her to. She indicated to the Permanent Secretary in her letter to her that she intended to have such a conversation with him. She states that she felt it important to do this, firstly, because in her opinion Mr Salmond can be persistent and will often interpret conversations or messages in a way that best suit his interests. She wanted to leave no room for misinterpretation. Also, she believed it highly likely that their paths would cross towards the end of that week at the SNP Conference. As it turned out, she thinks he did not attend. She considered that speaking to him in a planned way was better than having him try to 'corner' her in the course of the Conference.

10.7. The text of the First Minister's letter to the Permanent Secretary was as follows:-

Letter from FM to Permanent Secretary

STRICTLY PRIVATE & CONFIDENTIAL

6 June 2018

For the attention of the Permanent Secretary

On Monday 2 April I was informed by Alex Salmond that you were investigating a complaint from within the civil service about his conduct while First Minister and that the complaint relates to alleged conduct of a sexual nature.

It was clear, from what he told me, that the complaint was being investigated under the guidance put in place towards the end of last year as part of the Scottish Government's response to the public discussion around sexual harassment cases, and which contained provisions for the handling of any complaints against former Ministers. I recalled and explained that as First Minister I had no role in this process, and that I would be advised of a complaint against a former Minister only when you have concluded your investigation.

The former First Minister (FFM) contacted me again on Monday 23 April to say that he intended to propose mediation.

I told the FFM on both occasions that it would not be appropriate for me to seek to intervene in the process in any way and I did not do so.

[Redacted]

After careful consideration, I decided not to inform you of these approaches as I did not want there to be any suggestion that I was seeking to intervene in the process.

However, I have now had a further approach from the FFM and, given its nature and that it represents a potential challenge to the process, I have decided that I should make you aware of it.

The FFM has told me that he considers the process being followed by the Scottish Government to be unlawful, that he has legal advice to the effect that he would be successful in an application for Judicial Review of the process, and that if any finding is made against him, it is his intention to lodge an application for Judicial Review to seek to have the process declared unlawful.

I want to be very clear that my purpose sending this note is not to ask you to cease the investigation or to influence its course in any way – it is to be transparent with you about my knowledge of a potential challenge to the process. You and I have discussed on many occasions the importance of a zero tolerance approach to sexual harassment within the Scottish Government and the importance to building confidence in such an approach of taking such complaints seriously and ensuring proper investigation. I am clear that the seniority, political affiliation or relationship to me or my government of any person subject to a complaint should have no bearing on how it's handled. To that end, you have my support in taking whatever steps you consider necessary and appropriate to investigate any complaint about inappropriate conduct within the Scottish Government.

It remains my view that it would be inappropriate for us to discuss the substance of the investigation prior to its conclusion.

I intend to inform the FFM that I have told you about his approach to me and to advise him again that it would not be appropriate for me to intervene in the process.

Finally, I am also mindful of the public interest considerations that arise when allegations of this nature are made. At this stage, however, it is my view that the interest of ensuring that the conduct of the investigation is fair to all parties and respects the confidentiality of the complainant(s) is the priority.

NICOLA STURGEON

10.8. I enquired of the Permanent Secretary, Ms Leslie Evans, concerning her actions and involvement in the matters covered by my remit. Her reply includes the following statements:-

You asked for a statement of my actions and involvement in the matters covered by your remit. In providing such a statement, I should make clear from the outset that, as a civil servant, all my actions – including those taken in relation to this matter – are undertaken on behalf of Ministers and in keeping with the Civil Service Code.

I was not aware at the time – nor have I been made aware since - of any attempt by the First Minister to bring any influence to bear on the Scottish Government's investigation of complaints against Mr Salmond under the Procedure for Handling Harassment Complaints against Current or Former Ministers. At all times, my engagement with the First Minister was in keeping with the respective roles set out for the First Minister and Permanent Secretary in the Procedure. Accordingly, I did not inform the First Minister that formal complaints had been made about Mr Salmond when they were received in January 2018. In line with the Procedure, I did inform the First Minister of the outcome of the investigation at a meeting on 22 August 2018 in her capacity as both First Minister and as Leader of the Party which the former Minister in question, Mr Salmond, had represented.

As I have set out in my response to your specific questions below, the First Minister wrote to me on 6 June 2018, following a discussion on 5 June 2018, informing me of contact that she had had with Mr Salmond. I replied to the First Minister on 7 June 2018 to acknowledge receipt of her letter and to note the information it contained. In addition, I also wrote to the First Minister towards the end of the investigation on 17 August 2018 to inform her I was seeking legal advice on next steps. In addition to these exchanges, the only other communication I recall with the First Minister on this matter was a telephone call sometime in mid-July in which she told me that she had met with Mr Salmond on 14 July 2018 and that he had raised the issue of arbitration

with her. She made it clear to me again that she had no role in this matter and that I must reach whatever decision I thought appropriate. Accordingly, my communication with the First Minister on this issue was very limited during the period in which the investigation was in progress.

In line with the Procedure, Mr Salmond had a number of opportunities to contribute to the investigation. I address this further in my answers to your specific questions below.

The intentions that lay behind my actions at all times throughout this period were the need to follow the process set out in the Scottish Government's Procedure for Handling Harassment Complaints against Current or Former Ministers, in line with the Civil Service values of integrity, honesty, objectivity and impartiality. This was especially true in carrying out the responsibilities as Deciding Officer assigned to the Permanent Secretary under the Procedure. At no time did I experience any attempt whatsoever by the First Minister – or anyone acting on behalf of the First Minister – to influence how I undertook that role, or the decisions I came to, either in terms of the process followed or the substance of the matter. Indeed, this point is made explicit in the First Minister's letter to me of 6 June 2018: (Here the Permanent Secretary quoted from the First Minister's letter set out above).

11. The meeting on 7 June

11.1. This meeting took place in Aberdeen on 7 June 2018. The First Minister says that her Chief of Staff was aware of the meeting but not present though she did interrupt to bring it to an end as the First Minister had other matters to attend to. At the meeting on 7 June, the First Minister says she advised Mr Salmond of the action she had taken and made clear again that she was not prepared to intervene in the process. He wanted to give her a document to take away which she believes was a legal opinion he had obtained. She declined to do so. He stated his intention to take legal action if necessary. She expressed it as her opinion that given the seriousness of the complaints against him he should consider addressing the substance of them. Mr Salmond's description of the meeting does not differ in substance from the First Minister's.

11.2. The First Minister later told the Permanent Secretary of this meeting, but says that they did not have any detailed discussion about it.

12. The meeting on 14 July and telephone conversation of 18 July

12.1. Mr Salmond sent the First Minister a further message on 5 July 2018. She did not respond to this message. The message is interesting in explaining Mr Salmond's view of arbitration and how he sought to persuade the First Minister of what he saw as its advantages for the Scottish Government. I quote the relevant part of the message:-

Nicola. I have slept on the content of the latest letter from the PS rejecting arbitration. Two points I want to make to you privately. Firstly, the explanation given in the letter is that arbitration is rejected because the SG is confident in the legality of the process. With respect, that entirely misses the point. The SG may well believe it is lawful. My Senior Counsel believes it is unlawful. That's the whole point of the arbitration.

The legality will have to be resolved either in private (in a confidential and binding arbitration) or in public at the Court of Session. The SG, and you, have everything to gain from arbitration. If my legal advice is wrong, I will accept that and the current process proceeds. If the SG legal advice is wrong, you discover that without losing in a public court. Adopting an arbitration process also guarantees confidentiality for the complainers, regardless of what happens.

12.2. The next contact between Mr Salmond and the First Minister was on 13 July 2018, as a result of a message sent to Mr Salmond on WhatsApp saying the First Minister wanted to meet him, which led to their third and final meeting being arranged for 14 July at her home. The First Minister states that by the time of the meeting on 14 July, she was again concerned that the matter might become public. She says that she always thought it possible, even likely, that this was the course Mr Salmond would ultimately take. Were he to take legal action, which she now knew he was considering, this could also put matters into the public domain. She was again anxious - as Party Leader and from the perspective of preparing the SNP for any potential public issue - to know whether his handling of the matter meant it was likely to become public in the near future.

12.3. At that meeting, he told the First Minister he was asking the Scottish Government to agree a process of arbitration. For reasons that she says she did not understand then, and does not understand now, he believed she was blocking this. She told him that was not so as she had no involvement in the complaint process. She says that she suggested again that he should address the substance of the

complaints rather than simply focusing on procedure. Although he indicated he would reflect on this, the First Minister believed that he was focused on his request for arbitration and seemed unwilling to accept that she would not put pressure on the Permanent Secretary to accede to it. However, she did tell the Permanent Secretary on 16 July that in relation to arbitration she (the Permanent Secretary) should “reach whatever decision [she] thought appropriate” (see paragraph 10.8 above and Paragraph 12.6 below). In this respect the First Minister indicated her neutrality on the issue, contrary to Mr Salmond’s belief that she expressed her opposition to arbitration.

12.4. Mr Salmond sent the First Minister further messages on 15 and 16 July 2018. The First Minister states that the message of 15 July is Mr Salmond’s interpretation of her saying that she was not involved in the decision. I quote:-

Many thanks for making the time yesterday. I am grateful that you will correct the impression being given that you are against arbitration or that it is somehow against your interests. I know that you need to reflect further on how to progress things beyond that and am not blind to the difficulty of legal advice being suspicious of arbitration. I am genuinely at a loss as to what the downside is for anyone, complainers, SG or me or you. The reasons given to date have been meaningless or more recently just a misrepresentation of your position. If there are good legal reasons then surely they can be set out for you/us. I will wait to hear how you are able to proceed. I am also giving much thought to your advice and thinking deeply about how arbitration on process might open up the space and opportunity to address and resolve the underlying matters, as far as is possible, to everyone’s satisfaction.

12.5. By this time, it was clear to the First Minister that her relationship with Mr Salmond was breaking down. In her opinion he was clearly upset and angry that she was not assisting him to achieve the outcome he wanted. The First Minister states that she was also upset with him. She says that the nature of the complaints against him and the account he had given her of one of them had badly shaken her faith in him. She states, however, that in spite of that she did not want their relationship to break down completely. He had been her friend and colleague for 30 years.

12.6. The First Minister advised the Permanent Secretary on 16 July of her meeting with Mr Salmond on 14 July and made the Permanent Secretary aware of his belief that she was blocking arbitration. The

First Minister made clear to the Permanent Secretary again that she had no view on the matter and the decision was for the Permanent Secretary alone. Given the risk of legal action, she says she did not want any suggestion that an opinion attributed to her, which she had not expressed, was influencing decisions she had no part in. She reiterated to the Permanent Secretary that she must reach whatever decisions she considered appropriate and that she, the First Minister, did not seek to influence her in any way. The First Minister also told her - she thinks it was on the First Minister's return from annual leave - that she had spoken to Mr Salmond on the phone on 18 July, but she says that did not discuss the details of that conversation.

12.7. The First Minister says that it was her wish to avoid her relationship with Mr Salmond from breaking down completely that prompted her telephone call to him on 18 July. She wanted to draw a line under their contact about the matter. She was also about to take a two day summer break and she did not want it interrupted by contact from him. However, she thinks she was also hoping to make him understand and accept why she could not and would not intervene.

12.8. Mr Salmond's account of this 18 July telephone call is that the First Minister phoned him at 13.05 to say that arbitration had been rejected and suggested that this was on the advice of the Law Officers. She urged him to submit a substantive rebuttal of the specific complaints against him, suggested that the general complaints already answered were of little consequence and would be dismissed, and then assured him that his submission would be judged fairly. She told him he would receive a letter from the Permanent Secretary offering him further time to submit such a rebuttal which duly arrived later that day. Mr Salmond says that as it turned out the rebuttal once submitted was given only cursory examination by the Investigating Officer in the course of a single day and that she had already submitted her final report to the Permanent Secretary. Mr Salmond's view is now that it was believed that his submission of a rebuttal would weaken the case for Judicial Review (his involvement in rebutting the substance of the complaints being seen to cure the procedural unfairness) and that the First Ministers phone call of 18 July 2018 and the Permanent Secretary's letter of the same date suggesting that it was in his "interests" to submit a substantive response was designed to achieve that.

12.9. Later on 18 July, Mr Salmond sent the First Minister a copy of a letter he had received from the Scottish Government. She did not respond to this message. He sent her a further message on 20 July 2018. Again, she did not respond. She has had no contact with Mr Salmond since.

13. The Procedure for handling complaints against Ministers and former Ministers and Mr Salmond's objections to it

13.1. As already mentioned in Chapter 2 above, in December 2017 the Scottish Government adopted the Procedure. Its full and formal title is "Handling of harassment complaints involving current or former ministers" and it is described as an "internal procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet". Since 23 August 2018 it is also published on the Scottish Government's website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>. The manner in which the Procedure is intended to operate are set out in Chapter 3 above.

13.2. As pointed out in Chapter 3 the Procedure not only does not envisage the notification of complaints made against former Ministers to the First Minister prior to the completion of the investigation but is designed to preclude her from having any role in the process. The purpose of this provision is clearly to avoid either the reality or the appearance of political interference with the process of an investigation and to ensure the impartiality of investigations. In my opinion this is a legitimate objective of the scheme.

13.3. So far as concerns the limitations on the First Minister's involvement in the Procedure in my opinion the principle of excluding any role for politicians in the resolution of complaints of harassment of public servants is not only a legitimate one but there is a strong case for maintaining it. It is appreciated that Mr Salmond and no doubt others do not share this view. Mr Salmond made a forceful case to the effect that the First Minister may intervene in the Procedure in his submission to me which I discuss below at paragraph 13.7.

13.4. In the event the Government accepted that the process of investigation in the case of the complaints made against Mr Salmond was flawed because of contact between the person who was appointed as investigating officer and the complainants both before and at the time their complaints were formally made. It is not part of my remit to examine how or why that happened or whether matters might have been handled differently except insofar as it is alleged that

certain aspects of the conduct of the Government's defence to Mr Salmond's legal proceedings in themselves constituted a breach of the Ministerial Code. This aspect of the matter is dealt with in Chapter 14 below. I have, however, been asked in the remit "to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure." I am not asked in my remit to comment on whether the Procedure itself may require revision in the light of experience and it is not part of the function of the independent advisers on the Ministerial Code.

13.5. It is of course important to learn what lessons there are from the experience gained in dealing with the complaint against Mr Salmond. In his judicial review proceedings he raised a substantial number of complaints about the procedures applied in his case apart from the issue conceded by the Government. In his submission to me he has repeated his view that there are serious deficiencies in the Procedure and has identified a number of them, including the absence of a mediation procedure in the case of complaints against former Ministers as well as the more fundamental question of how a non-statutory and non-contractual scheme could bind a former Minister who had already left office when the Procedure was introduced. It seems to me that a report on the question whether there have been breaches of the Ministerial Code is not the place to provide that answer. Since Mr Salmond's judicial review proceedings were conceded by the Scottish Government on one of the grounds argued there is no court decision on the merits of the various other legal grounds advanced in Mr Salmond's proceedings. It may be necessary, therefore, to examine each and every one of these issues with a view to deciding what, if any, amendments to the Procedure may be required in the light of this experience. In particular in my opinion the question of whether a relatively informal resolution procedure is appropriate at all and offers proper guarantees for the rights of all parties where the facts alleged in a complaint may also, if proved, amount to serious criminal conduct, is a matter which should receive further consideration.

13.6. A process of review of the Procedure by Ms Laura Dunlop QC was completed on 16 March 2021. Ultimately the question of whether

there are legal deficiencies in the Procedure which need to be addressed is one for the Scottish Law Officers.

13.7. Mr Salmond in his submission to me, having expressed his concern about the terms of the remit of this enquiry, among other matters stated the following:

4. ...The reason for my concern is that the remit drawn up for Mr Hamilton focuses on whether the First Minister intervened in a civil service process. As I have pointed out to Mr Hamilton, I know of no provisions in the Ministerial Code which makes it improper for a First Minister to so intervene.

5. To the contrary, intervention by the First Minister in an apparently unlawful process (subsequently confirmed by the Court of Session) would not constitute a breach precisely because the First Minister is under a duty in clause 2.30 of the Ministerial Code to avoid such illegality on the part of the Government she leads.

6. Further, to suggest intervention was a breach would be to ignore and contradict the express reliance of the procedure on the position of the First Minister as the leader of the party to which the former minister was a member in order to administer some unspecified sanction.

13.8. It is certainly correct that there is nothing in the Ministerial Code which expressly prevents the First Minister from involving herself in any process of government. However, the procedures to be followed in an internal Scottish Government enquiry into allegations of harassment were set out in the Procedure which had been adopted and agreed by the Scottish Government including the First Minister as recently as a few months before. While that Procedure had not been enacted into law, and it might therefore be argued that the Scottish Government could have revoked or overridden it, it could hardly be argued that the First Minister would have had any power unilaterally to do so. The Ministerial Code lays a major emphasis on the principle of collective cabinet responsibility which is as binding on the First Minister as on her ministerial colleagues.

13.9. Even had such a unilateral move by the First Minister been possible it would undoubtedly have been seen as a partisan and political interference in a process which was then underway, and as an interference of a nature which the Procedure was expressly designed to prevent. What is more the complainants had undoubtedly acted in the expectation that their complaints would be dealt with in accordance with the terms of the Procedure. What answer could have

been made if these complainants in their turn had sought a judicial review of an attempt to overturn a process which was already underway? Such a U-turn would certainly have been both legally and politically impossible even had the First Minister wished to make it, which clearly she did not. One can only imagine the political reaction had the First Minister attempted to override a system expressly designed to deal with harassment complaints against former Ministers on the first occasion when it was used for this purpose. To have adopted a harassment Procedure after extensive consultation, and then to have altered it following a confidential arbitration process, as Mr Salmond was proposing, at a time when significant complaints against a former First Minister were actually under investigation, would undoubtedly have undermined public confidence in the processes of government to a much greater extent than in fact eventually happened as a result of Mr Salmond's successful judicial review.

13.10. Furthermore, to suggest that the First Minister not only could but should have intervened unilaterally to protect legality is to ignore the role of the Law Officers both under the Scotland Act and in the terms of the Ministerial Code. Paragraph 2.30 of the Code, having stated the overarching duty on Ministers to comply with the law goes on to state that it is part of the role of the Law Officers to ensure that the Government acts lawfully at all times.

13.11. It might be argued that a distinction could be drawn between an involvement in the Procedure to override the Permanent Secretary's decision as distinct from a possible involvement to insist on settling the litigation intended and subsequently in fact brought by Mr Salmond by agreeing to his demands for arbitration. In my opinion such a distinction would be wholly artificial. The First Minister acted in accordance with the spirit as well as the letter of the Procedure in declining to involve herself in questions concerning Mr Salmond's intended or actual litigation. The Procedure was one which the legal advisers to Scottish Government had been involved in drawing up. The services of the Scottish Law Officers, who under the Scotland Act 1998 are responsible for the provision of legal advice to Scottish Government, were at all times available to the First Minister and Scottish Government when the Procedure was being devised and to the Permanent Secretary when Mr Salmond's judicial review was being defended. Even on the assumption that the Law Officers got it wrong

it does not follow that the First Minister was in breach of the Ministerial Code in failing to take Mr Salmond's advice.

13.12. I do not, therefore, accept that the First Minister's decision to follow the terms of the Procedure and not to seek to avoid or amend it during the course of an ongoing investigation amounted to a breach of the Ministerial Code. In my opinion for the reasons stated in the preceding paragraphs Mr Salmond's submissions in this regard are misconceived.

14. The Handling of Mr Salmond's Judicial Review Proceedings and the Ministerial Code

14.1. Mr Salmond has raised a further matter which he says constitutes a breach of the Ministerial Code. He refers to the manner in which the Scottish Government attempted to defend his petition for judicial review in which he challenged the legality of the Procedure and its application in his case.

14.2. As is now well known the Scottish Government's defence of the petition was a saga of failures to disclose relevant evidence. The key documents relevant to the Government's defence have been, rather belatedly, published by the Scottish Government on its website¹³.

14.3. I do not propose to set out here a full chronology of what happened. The key problem was that the Investigating Officer in charge of investigating the complaints against Mr Salmond had had prior contact with the complainers before the complaints were formally made. However, the Procedure Stated that the IO "will have had no prior involvement with any aspect of the matter being raised." Unfortunately the full extent of the prior involvement was not revealed all at once and the details of that involvement emerged in instalments. The impact of this can be gauged from counsel's response at different stages- "a very real problem indeed" and "extremely concerning" on 31 October, the Petition "more likely than not to succeed" on 6 December. On that date counsel advised

29 The question that will justifiably now be asked is where this takes us. There are only two options.

30 One is to concede the Petition and, if so advised, return to square one. We have no doubt whatsoever that this is not an attractive option: it would require the conceding of (doubtless substantial) expenses, and would be trumpeted everywhere by the petitioner.

31 The other is simply to press on regardless. That is, in many ways, even less attractive: the expenses will be far higher, and the trumpeting far louder, if the case proceeds to a written judgment. Moreover, and potentially of more concern, is the real prospect of damaging criticism from Lord Pentland. He is not a judge known to pull his punches, and we are both concerned at the

¹³ <https://www.gov.scot/publications/legal-advice-related-to-the-parliamentary-inquiry-into-the-scottish-governments-handling-of-harassment-complaints-sghhc/>.

possibility of criticism, both from the bench in the course of the hearing and in any written judgment, which would not reflect well on the respondents.

32 Ultimately, our own view is that the “least worst” option would be to concede the Petition. We understand how unpalatable that advice will be, and we do not tender it lightly. But we cannot let the respondents sail forth into January’s hearing without the now very real risks of doing so being crystal clear to all concerned¹⁴.

14.4. In an email of 11 December from an unknown Government source it is stated that the Lord Advocate “was indeed clear about no question of conceding, with a stress on the benefit that would accrue from a judicial finding (a) that it was right to have a procedure in such circumstances and (b) it was right to have this procedure, even if there is a risk - which we all know and understand - that he may be forced to hold that there were faults in the way it was applied in the particular case”. In another email of the same date from an unknown Government source it is stated that the Lord Advocate and the Solicitor General were “very clear that no question or need to drop the case. LA clear that even if prospects are not certain it is important that our case is heard. Senior Counsel made clear that his note was not intended to convey that he didn’t think we had a stateable case...”¹⁵

14.5. On 17 December Counsel’s pessimism had deepened. A joint advice of Senior and Junior Counsel of that date includes the following passages:-

1 We have drafted this note for the eyes of the Lord Advocate and Paul Cackette only.

2 It has been prepared in response to a series of events in the week of 10 December 2018 which led us to consider very seriously whether we were bound to withdraw from acting for the respondents in this matter. Having given the question anxious consideration we concluded that we would be entitled to so withdraw but at this stage are not bound to do so.

3 We introduce matters in this way to convey the seriousness of matters from our perspective.

31. It has become increasingly clear that the approach of the petitioner in this matter is one which may appropriately be described as a “scorched earth” one.

¹⁴ [OCT-+LA05+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

¹⁵ [OCT-+LA06+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](#)

It is clear that there is no concern on his part as to who might be criticised, or harmed, as a result of these proceedings. We understand that this is well understood by those “in the crosshairs” – most obviously the Permanent Secretary and the First Minister. If instructions are to proceed notwithstanding then so be it – we are not in a position where we are professionally unable to mount a defence (because, for example, there is no statable defence). We are, however, perilously close to such a situation. We are firmly of the view that at least one of the challenges mounted by the petitioner will be successful. We are told that there are other aspects to the case which justify the running of the defence and that, accordingly, there is no prospect of the petition being conceded. That decision is not for us to take and as long as informed consent is given the decision to proceed is one which we must obey. We are, however, entirely unconvinced as to what benefit that might arise from the hearing in January that might outweigh the potentially disastrous repercussions thereof. Leaving aside the large expenses bill that would inevitably arise, the personal and political fallout of an adverse decision – especially if, as may be the case, it is attended by judicial criticism – seems to us to be something which eclipses by some way the possibility of helpful judicial comments. That being so, and recognising as we do that the wider political picture is something that others are far better than are we to comment upon, we cannot let pass uncritically the suggestion that the petition cannot be conceded. It would be possible simply to accept (as is our genuine advice as a matter of law) that the appointment of JM as Investigating Officer was, whilst made in bona fide, on reflection indefensible. That would render nugatory all of the other, potentially more harmful, aspects to the challenge. Accepting that a technical error was made could not sensibly be criticised. This would protect those that might otherwise be harmed by the vigorous nature of the challenge that is to be mounted. It would stem the substantial expenses bill that we have no doubt is presently being incurred. Given that we genuinely cannot see the defence prevailing in any event, that seems to us to be the only sensible approach.

32 We are acutely aware that much of this has already been said, and discounted. The decision to proceed has been taken by very experienced legal and political minds, who are entitled to proceed as they wish. However, we are – independently but also mutually – unable to see that the benefits in proceeding come close to meeting the potential detriments in so doing. Given the potential for harm we simply wish all concerned – and we include the First Minister in this – to be absolutely certain that they wish us to plough on regardless notwithstanding the concerns which we have outlined¹⁶

14.6. On 19 December matters had deteriorated further. The following is from a joint note from counsel:

1 We write further to recent events. With regret, our dismay at this case deepens yet further.

¹⁶ [OCT-+LA24+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)

2 We will not rehearse the regrettable way in which document disclosure has unfolded. Suffice to say that we have each experienced extreme professional embarrassment as a result of assurances which we have given, both to our opponents and to the court, which assurances have been given on instructions, turning out to be false as a result of the revelation of further documents, highly relevant yet undisclosed. We, of course, required to consult at 9.15pm last night to discuss the ramifications thereof.

3 This morning, the first part of the commission began. The inevitable result of the last minute disclosure of the additional documents was that the commission required to be adjourned. The havers now cited for Friday can expect a torrid time in the witness box given the late disclosures. That comment applies in particular to the IO, for the reasons which follow.

4 All of that is bad enough. However, it pales beside the revelation in the course of this morning of two further documents. These give rise to the same two concerns discussed in the consultation last night: (i) the late nature of their revelation; and (ii) their content. Each document comes from the IO.

5 As to the late nature of the revelation, this is unexplained, and frankly inexplicable. Given the nature of the searches described by [redacted] as having been undertaken, we regret that we simply cannot understand why these documents have been made available only now¹⁷

14.7. There followed what was described as a “watershed moment” on 21 December¹⁸. The Investigating Officer in the case gave evidence on oath in the commission that in relation to a meeting between her and a complainer immediately before the complaint was made she could not remember that meeting. As counsel pointed out, this meant that the Government could not aver, much less prove, what happened at the meeting, and thus unable to rebut the rather obvious inferences that might be drawn from the fact that the meeting happened. Following this the Scottish Government decided to throw in the towel.

14.8. There is undoubtedly scope for political criticism of the manner in which Scottish Government handled Mr Salmond’s proceedings. That is not a matter for me to express any view upon. However, Mr Salmond argues that the manner in which the case was handled amounts to a breach of “the overarching duty on Ministers to comply with the law” stated in paragraph 2.30 of the Ministerial Code.

¹⁷ [Legal advice related to the Parliamentary Inquiry into the Scottish Government’s Handling of Harassment Complaints \(SGHHC\) - gov.scot \(www.gov.scot\)](#)

¹⁸ [OCT+-+LA17+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)

14.9. There are undoubtedly ways in which the handling of court proceedings could involve illegality. Perjury is a serious offence, and the tendering of evidence known or believed to be perjured would be a grave matter, as would the use of forged documents in legal proceedings. Malicious prosecution is both a tort and a crime. Conspiracy to pervert the course of justice is also a serious offence. It is also essential that judges can trust counsel and solicitors who appear before them and therefore very high standards are expected in respect of their duty of candour and not to mislead the court. Instructions to act in breach of these duties would therefore be a serious matter.

14.10. I cannot see that any of these issues arose in this case. On several occasions counsel made clear their disagreement with decisions that were made but in each case accepted that the final say rested with the Law Officers. There is no doubt from the whole manner and tone of counsel's advices that they would, quite properly, have declined to accept any instructions which were improper.

14.11. Mr Salmond appears to be under the misapprehension that the Government is under a duty to withdraw a case if advised that there is less than an evens chance of winning. There is no such rule and the prediction of the outcome of cases is not an exact science.

14.12. There is in my opinion no evidence whatsoever that the First Minister acted improperly or in breach of the Ministerial Code with respect to Mr Salmond's petition. The evidence suggests that the key legal decisions were taken by the Law Officers. Having regard to the duty of the Law Officers to ensure that the Government acts lawfully at all times, and having regard to the position of the Lord Advocate under the Scotland Act (he cannot be removed from his position by the First Minister without the consent of the Scottish Parliament) I think the First Minister was fully entitled to rely on his legal advice.

15. The Ministerial Code: Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists

15.1. Sections 4.22 and 4.23 of the Ministerial Code provide as follows:-

4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.

4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.

15.2. It seems to have been generally assumed, even in the terms of the remit itself, that section 4.22 of the Ministerial Code applied to the meetings between the First Minister and Mr Salmond. I begin by saying that I do not accept that these meetings can be considered as SNP party meetings for the reasons stated in paragraph 9.8 of this report in which I discuss the character of the meeting of 2 April. The First Minister has accepted that before that first meeting with Mr Salmond she suspected the reason Alex Salmond wanted to see her on April 2 was that he was facing an allegation of sexual misconduct. As already explained I accept her statement that her motives for agreeing to the meeting were partly political and partly personal.

15.3. From the first sentence of paragraph 4.22 of the Code it is clear that the primary, and possibly the sole purpose of this provision is to deal with meetings with people and organisations which are held or can be considered “as part of the formulation of Government policy.” This is reinforced by the subsequent requirement in the paragraph “for

the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented.” Paragraph 4.23 then extends the provision to deal with the situation where informal meetings or discussions take place but again this is qualified by confining it to discussions containing “any significant content (such as substantive issues relating to Government decisions or contracts)”. Ministers must have numerous contacts every day which are not required to be recorded under this provision. The other highly significant aspect of this provision is that it applies only to “contacts with *external* individuals and organisations, including *outside* interest groups and lobbyists.” (Emphasis added).

15.4. We know what the discussions were about. They concerned a governmental process for dealing with harassment complaints against Scottish Government Ministers, former Ministers and officials generally known as “the Procedure”. As already stated its full and formal title is “Handling of harassment complaints involving current or former ministers” and it is described as an “*internal* (my emphasis) procedure agreed in December 2017 and published in February 2018 on the Scottish Government intranet”. Since 23 August 2018 it is also published on the Scottish Government’s website at <https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/>.

15.5. Note that the procedure is clearly described as an internal procedure. It did not apply to anybody who did not and never had worked for Scottish Government. Indeed it was precisely the claim made by Scottish Government to have jurisdiction over harassment carried out by former Ministers during their time in office which formed a major bone of contention between Mr Salmond and the Scottish Government. In my opinion any person who was being proceeded against under the Procedure, or for that matter was making a complaint under its provisions, was entitled to raise an issue without the matter being recorded under these provisions of the Code. I fully accept the logic of the First Minister’s position that it would have been impossible to record such meetings or discussions without a risk of prejudicing the proceedings or interfering with their confidentiality.

15.6. In my opinion, therefore, neither the letter nor the spirit of paragraphs 4.22 and 4.23 of the Ministerial Code applied to the discussions between the First Minister and Mr Salmond. Consequently I do not consider that the First Minister acted in breach of the Code in not disclosing them prior to 5 June.

16. The Ministerial Code: Special Advisers

16.1. Paragraphs 4.15 to 4.19 of the Ministerial Code deal with special advisers. Much of these provisions deal with appointment, distribution of posts, salaries and terms and conditions of appointment. Special Advisers are subject to a code of conduct which was last revised in March 2017. This may need some further revision in the light of the implementation of the Procedure. If the First Minister is to remain excluded from any involvement in the Procedure consideration might be given to whether this should also apply to the Chief of Staff and other special advisers. Consideration might also be given to whether some of the provisions of the Ministerial Code which apply to Ministers should also apply with appropriate modifications to special advisers, for example, the requirement to record external contacts.

17. The alleged leak to the Daily Record

17.1. Mr Salmond has asked for an investigation into whether an alleged criminal leak of part of the contents of the Permanent Secretary's Decision report to the Daily Record was sourced from the First Minister's Office.

17.2. It is no part of my function and I have no power to investigate criminal offences. If Mr Salmond has evidence to support this complaint he should refer the matter to the police.

18. Conclusions and recommendations

18.1. I have considered the following issues which were alleged to amount to a breach of the Ministerial Code by the First Minister:-

1. The allegation that her failure to record her meetings with and telephone discussions with Mr Salmond and others on 29 March, 2 and 23 April, 7 June and 14 and 18 July 2018 amounted to a breach of paragraphs 4.22 and 4.23 of the Ministerial Code.

2. The allegation that the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers (“the Procedure”).

3. The allegation that the First Minister misled the Scottish Parliament in relation to her meetings as specified in paragraph 1 above.

4. The allegation that the First Minister was in breach of her duty to comply with the law in respect of the Scottish Government’s response to the petition of Mr Salmond for judicial review of the Procedure.

18.2. For the reasons set out in detail above in this Report I am of the opinion that the First Minister did not breach the provisions of the Ministerial Code in respect of any of these matters.

18.3. The remit also invited me to consider “whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.” In view of the urgency of addressing the other issues relating to alleged breaches of the Ministerial Code which are referred to in the remit I decided to defer consideration of this. It would also in my opinion be appropriate that the other independent adviser also take part in this process. It would also seem sensible to await decisions on what changes if any are to be made to the Procedure. It might also be appropriate to consider the matters relating to special advisers referred to in Chapter 16 in this context.

James Hamilton

20 March 2021

Bibliography

The Ministerial Code

The Scottish Ministerial Code can be found at the following link:

[Scottish Ministerial Code: 2018 edition - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/ministerial-code/pages/introduction.aspx)

The Procedure

The procedure entitled “Handling of harassment complaints involving current or former ministers”, under which the original complaints were handled, can be found here: [https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/](https://www.gov.scot/publications/handling-of-harassment-complaints-involving-current-or-former-ministers/pages/introduction.aspx)

The Scottish Government provided a submission to the Scottish Parliament Committee on the development of the policy. This can be found at the following link: [SP+SGHHC1+Phase+1+Written+Statement+19+June+2020.pdf \(www.gov.scot\)](https://www.gov.scot/publications/development-of-the-policy/pages/introduction.aspx)

The Scottish Government also provided a timeline of the development of the procedure. This can be found at the following link: [Timeline for Statement 1 - 14 August\(1\).pdf \(parliament.scot\)](https://www.parliament.scot/publications/timeline-for-statement-1-14-august-2020/pages/introduction.aspx)

Documents supporting written statement on the development of the policy

Circulation of draft version 5.0 of the procedure for review :
[SP+SGHHC1+XX001+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](https://www.gov.scot/publications/draft-version-5-0-of-the-procedure-for-review/pages/introduction.aspx)

Discussion of the procedure covering all harassment not only sexual harassment :
[SP+SGHHC1+YY044+-+3+-+Redacted+or+Watermarked+Version.pdf \(www.gov.scot\)](https://www.gov.scot/publications/discussion-of-the-procedure-covering-all-harassment-not-only-sexual-harassment/pages/introduction.aspx)

Fairness at work

There are a number of publically available sources which give background on fairness at work and harassment complaints in the Scottish Government.

This link provides information on harassment complaints up to 2017:
[Internal complaint system: FOI release - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/internal-complaint-system-foi-release/pages/introduction.aspx)

This link provides information to People Survey conducted yearly in the Scottish Government to obtain view from our employees about the experience of working in the Scottish Government and its agencies:

[Scottish Government People Survey 2005 to 2018 - gov.scot \(www.gov.scot\)](http://www.gov.scot/Scottish-Government-People-Survey-2005-to-2018)

The Judicial Review

The Scottish Government provided a submission to the Scottish Parliament Committee on the conduct of the Judicial Review. This can be found at the following link:

[SP SGHC2 Written Statement on the Judicial Review 20 July 2020.pdf \(parliament.scot\)](http://www.parliament.scot/SP_SGHC2_Written_Statement_on_the_Judicial_Review_20_July_2020.pdf)

Official Committee's reports

The Committee's evidence session with the First Minister:

[Official Report \(parliament.scot\)](http://www.parliament.scot/Official-Report)

First Minister's opening statement on 8th January 2018:

[Official Report 8 Jan 2019 \(parliament.scot\)](http://www.parliament.scot/Official-Report-8-Jan-2019)

Alex Salmond evidence submission of 23rd February 2021:

[Alex Salmond \(5\) \(further redactions 23.02.2021\).pdf \(parliament.scot\)](http://www.parliament.scot/Alex-Salmond-5-further-redactions-23.02.2021.pdf)

Documents to Legal privileged advice :

Joint counsel note of 6th December 2018 :

[OCT-+LA05+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](http://www.gov.scot/OCT-+LA05+-LPP-+5-+FINAL-+Committee+copy.pdf)

Consultation with Law Officers, Senior Counsel and SGLD:

[OCT-+LA06+-LPP-+5-+FINAL-+Committee+copy.pdf \(www.gov.scot\)](http://www.gov.scot/OCT-+LA06+-LPP-+5-+FINAL-+Committee+copy.pdf)

Joint Counsel Note of 17th December 2018:

[OCT-+LA24+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](http://www.gov.scot/OCT-+LA24+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf)

Joint Counsel Note of 19th December 2018:

[Legal advice related to the Parliamentary Inquiry into the Scottish Government's Handling of Harassment Complaints \(SGHHC\) - gov.scot \(www.gov.scot\)](#)

Counsel's email to SGLD regarding the prior contact between IO and complainants:

[OCT+-+LA17+-+LPP+-+5+-+FINAL+-+Committee+copy.pdf \(www.gov.scot\)](#)

Letter and report- final documents

From: [REDACTED] <[REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]@[REDACTED]>
Date: Sun, 21 Mar 2021 17:49:17 +0000
Attachments: Hamilton Report- Final Version- 20 March 2021.docx (101.89 kB); 22 March
Hamilton Report Cover Letter.docx (24.58 kB)

Hi James,

I have had a look at the letter and note and didn't have any additional comments.
I've attached the final version of both the letter and the report.

Best wishes,

[REDACTED]

RE: Email to Customer - (ref. S480146)

From: [REDACTED]@gov.scot>
To: iFix Event Updates <ifix.eventupdates@gov.scot>
Date: Wed, 21 Oct 2020 14:42:00 +0000
Attachments: Authorisation_of_Divisional_Head.docx (23.5 kB)

Completed form is attached.

From: ifix.eventupdates@gov.scot
Sent: 21 October 2020 10:59
To: [REDACTED]
Subject: Email to Customer - (ref. S480146)

[REDACTED]

That's great and thanks for letting me know.

[REDACTED]

Authorisation of Divisional Head:**eRDM Connect - New Workgroup Request - Statement of Compliance**

eRDM Connect provides secure and private workspaces to enable collaboration on documents, the capturing of conversations, and assignment of tasks. As Divisional Head you are responsible for all data and communication in your shared workspace(s) including but not limited to:

- I. providing training /guidance materials available in eRDM to all external participants invited to the workspace;
- II. sharing information directly from eRDM and where appropriate, enable authorised external users to collaborate on documents back into eRDM via eRDM Connect.
- III. ensuring the content in the shared workspace is kept in sync and accurate so everyone knows they're working from the most recent version of a document;
- IV. compliance and implementation of all relevant policies (Access Control Policy, Records Management Policy, Information Security Management Policy and Data Protection Policy) in the use of eRDM Connect;
See links below: [Data Protection Policy](#)
- V. Managing the connections by means of removing obsolete/superseded materials out of your workspace; and
- VI. ensuring that all breaches of information security, actual or suspected, are reported to the Office of Protective Security (OPS) or are investigated by Information Asset Owners in conjunction with Information Assurance and Risk if it involves Personal data. See link: <http://s1431a:8085/>
- VII. managing the membership of eRDM Connect User Groups and your workgroup ensuring that they are kept up to date at all times so that only authorised staff can create and use workspaces.

Data sharing considerations – the following points must be considered and agreed prior to the creation of a Workgroup which will allow individuals to share and collaborate on information contained within Workspaces. The following data sharing considerations must be taken into account and

- The information being shared must be justified.
- Personal data sharing must be compliant with data protection laws, a legal gateway must be identified and a record kept in a data sharing agreement
- The power to share based on your role within the organisation with other external organisations using this mechanism.

The information being shared is necessary and is being shared with the right individual(s). See link to Data Sharing checklist below which may be of use:

[ICO Checklist](#)

As the Divisional Head I agree this Workgroup should be created	☒
Name of Divisional Head	<i>Penny Curtis</i>
Date of Signing	21/10/2020

RE: eRDM Connect - Statement of Compliance - (ref. S480146)

From: Curtis PS (Penelope) <penelope.curtis@gov.scot>
To: [REDACTED] <[REDACTED]@gov.scot>
Date: Wed, 21 Oct 2020 09:59:23 +0000
Attachments: Authorisation_of_Divisional_Head.docx (23.5 kB)

[REDACTED]

Here's the form completed.

Penny

Penny Curtis
Deputy Director Elections and FOI
Directorate for Constitution and Cabinet
Scottish Government
2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG
[REDACTED]

From: [REDACTED]
Sent: 21 October 2020 10:46
To: Curtis PS (Penelope)
Cc: [REDACTED]
Subject: FW: eRDM Connect - Statement of Compliance - (ref. S480146)

Hi Penny,

I'm looking to set up an eRDM connect folder to allow Mr Hamilton and I to securely share documents and drafts.

This will sit within/be associated with an existing Cabinet Secretariat eRDM folder I am using for the referral work. However, as James Hynd has stepped back from involvement in the running of the referral I wanted to seek sign off from another member of SCS staff.

Would you be willing to complete the attached form to authorise the creation of this workspace?

Happy to discuss.

Best wishes,

[REDACTED]

From: ifix.eventupdates@gov.scot <ifix.eventupdates@gov.scot>
Sent: 19 October 2020 09:19
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: eRDM Connect - Statement of Compliance - (ref. S480146)

Hi [REDACTED]

As discussed, please find attached to this iFIX Request, the Statement of Compliance document, of the terms and conditions of using eRDM Objective Connect.

Before we can proceed, this should be signed by your Information Asset Officer/Head of

Division.

The signed terms and conditions document should be returned and attached to this iFLX Request as soon as possible.

Also, you will find further security information and guidance about eRDM Connect in this link: [Using eRDM Connect](#)

Let me know if you have any further questions.

Thanks



iTECS: eRDM Team

RE: Private - SGHHC update on submission

From: [REDACTED]@gov.scot>
To: Geoff Aberdein [REDACTED]
Date: Mon, 21 Dec 2020 12:09:16 +0000

Dear Geoff,

Many thanks for sending this, I will pass this to Mr Hamilton.

Best wishes,

[REDACTED]

From: Geoff Aberdein [REDACTED]
Sent: 21 December 2020 10:57
To: [REDACTED]@gov.scot>
Subject: Private - SGHHC update on submission

Dear [REDACTED]

On a strictly confidential basis, please find attached my revised submission for the SGHHC Inquiry.

On instruction from the Parliament clerks, the submission has been reviewed and revised for publication, to comply with the Committee's legal obligations and in accordance with its statement on handling information.

I thought it would be helpful for Mr Hamilton to see this given his ongoing investigation. This is not for further circulation, beyond Mr Hamilton obviously.

Best wishes

Geoff

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RE: FOR TOMORROW: FW: Query re James Hamilton

From: [REDACTED]@gov.scot>
To: [REDACTED]@dailymail.co.uk
Date: Mon, 21 Dec 2020 14:31:24 +0000

Dear [REDACTED]

Colleagues in Scottish Government communications team passed on the questions for Mr Hamilton set out in your email of Thursday 17th of December.

I passed your questions to Mr Hamilton, who has responded as follows.
The remit for my investigation is a matter of Parliamentary record. I do not propose to make any public comment pending the issuing of my report.
Please let me know if you have any further questions.

Best wishes,

[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code | Please contact me on Skype or on [REDACTED]

From: [REDACTED]@dailymail.co.uk>
Sent: 17 December 2020 20:08
To: [REDACTED]@gov.scot>
Subject: RE: Query re James Hamilton

Hi [REDACTED],

Thanks for calling back, much appreciated, and sorry it was so late on.

Some questions to relay to Mr Hamilton please.

I wanted to ask Mr Hamilton:

Is he investigating whether the FM misled parliament?

If not, why not?

Does he intend to do so?

If not, why not?

If he did decide to do so, would he let Mr Swinney know and has he done so, and if so when and if not why not?

Can Mr Hamilton share with us any correspondence he has had with the SG on the subject of what he is currently investigating and whether he is or intends to look at whether the FM misled parliament? If not why not?

For the SG:

Can I see a copy of the actual remit of Mr Hamilton's inquiry? If not why not?

Has the SG been told about whether Mr Hamilton is looking at whether the FM misled parliament?
If so what did Mr Hamilton tell the SG and when?
Would the SG expect to be told and if not why not?

And can you share with me any correspondence from Mr Hamilton regarding what he is looking at
in terms of his investigation? If not why not?

Thanks
[REDACTED]

From: [REDACTED]@gov.scot>
Sent: 17 December 2020 18:55
To: [REDACTED]@dailymail.co.uk>
Subject: RE: Query re James Hamilton

Hello [REDACTED]

I'm on another call at the moment.

I will come back to you.

[REDACTED]

From: [REDACTED]@dailymail.co.uk>
Sent: 17 December 2020 18:52
To: [REDACTED]@gov.scot>
Subject: RE: Query re James Hamilton

Sorry [REDACTED] I will need to speak to you on this, editor is asking.
Can you call me please - [REDACTED]

From: [REDACTED]@gov.scot>
Sent: 17 December 2020 18:45
To: [REDACTED]@dailymail.co.uk>
Subject: Query re James Hamilton

External Sender

Hi [REDACTED]

Re Mr Hamilton's remit, position is as set out in this Parliamentary answer.

[REDACTED]

Question S5W-32469: Alex Cole-Hamilton, Edinburgh Western, Scottish Liberal Democrats,
Date Lodged: 27/10/2020

To ask the Scottish Government what discretion the independent adviser of the Scottish Ministerial Code, James Hamilton, has in his role to extend the remit of his investigation in the event that evidence comes to light of possible further breaches of the Code.

Answered by John Swinney (06/11/2020):

Parliament was advised on 3 August 2020 about the terms of the remit for the Ministerial Code referral in PQ answer S5W-31054. The decision to proceed with a referral and the setting of its terms are consistent with the provisions set out in the Ministerial Code and have been agreed with the Independent Adviser. The terms of the remit address the concerns that have been raised about the First Minister's compliance with specific aspects of the Code in relation to certain meetings and other contacts, as described in the remit. As indicated by the First Minister at First Minister's Questions on 29 October, in delivering the remit the Independent Adviser is not constrained in taking evidence and reporting on other aspects of the Ministerial Code that he deems to be relevant.

[REDACTED] | Team Leader | Newsdesk | Scottish Government | [REDACTED]
[REDACTED]

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Re: FW: Ministerial Code investigation- video interview- availability

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED] <[REDACTED]@gov.scot>
Date: Mon, 21 Dec 2020 13:28:25 +0000

Any time that week should be fine.

On Mon 21 Dec 2020 at 12:00 <[REDACTED]@gov.scot> wrote:

Hi James,

The Perm Sec is asking whether an interview in the week of the 25th of January would be suitable- are there any times then that would work for you?

Best wishes,

[REDACTED]

From: Bruce A (Andrew) <Andrew.Bruce@gov.scot>
Sent: 18 December 2020 17:35
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: RE: Ministerial Code investigation- video interview- availability

Hi [REDACTED]

Thanks for your message which I have discussed with the Permanent Secretary. She was wondering whether it would be possible to schedule an interview during the week commencing 25 January?

Thanks

Andy

Andy Bruce

Principal Private Secretary to the Permanent Secretary

Scottish Government

[REDACTED]

andrew.bruce@gov.scot

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 16 December 2020 12:37
To: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: Ministerial Code investigation- video interview- availability

P/S Permanent Secretary,

As you know, James Hamilton is currently conducting an investigation into the First Minister's self-referral under the Ministerial Code. The Permanent Secretary has provided a written statement to Mr Hamilton.

As set out in his letter of September 2020, Mr Hamilton may wish to invite those who have provided written statements to him to participate in an interview to discuss the content of the written statement, and to allow Mr Hamilton to ask any supplementary questions.

Mr Hamilton is finalising his consideration of written statements, and would like to ask whether the Permanent Secretary would be available to participate in a video interview in the weeks commencing 11th and 18th January 2021?

Best wishes,

[REDACTED] [REDACTED]

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From: [REDACTED]
Sent: 21 December 2020 12:16
To: James Hamilton [REDACTED]
Subject: FW: Private - SGHHC update on submission

Hi James,

Please see attached submission from Geoff Aberdein- this is the version that will be published by the Committee, and so may be slightly different to the earlier version he provided.

I will keep an eye out for when the Committee publishes this.

Best wishes,

[REDACTED]

From: Geoff Aberdein <[REDACTED]>
Sent: 21 December 2020 10:57
To: [REDACTED] [REDACTED]@gov.scot>
Subject: Private - SGHHC update on submission

Dear [REDACTED]

On a strictly confidential basis, please find attached my revised submission for the SGHHC Inquiry.

On instruction from the Parliament clerks, the submission has been reviewed and revised for publication, to comply with the Committee's legal obligations and in accordance with its statement on handling information.

I thought it would be helpful for Mr Hamilton to see this given his ongoing investigation. This is not for further circulation, beyond Mr Hamilton obviously.

Best wishes

Geoff

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Written submission from Geoff Aberdein

CONTEXT

This submission is made in response to the request received from the Convener of the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints ("the Committee"). On instruction from the Parliament clerks, the submission has been reviewed and revised for publication, to comply with the Committee's legal obligations and in accordance with its statement on handling information.

BACKGROUND

By way of background I was a Special Adviser to the First Minister of Scotland between May 2007 and November 2014. I was appointed Chief of Staff following the SNP's victory in the 2011 Scottish General Election. I have not been active in front line politics since I left the Scottish Government in November 2014.

In the role of Chief of Staff I was responsible for the Special Adviser team and coordinated political support and advice for the First Minister as well as the entire Ministerial team.

My role was extremely demanding involving long hours. Indeed, the entire Special Adviser team had a strong work ethic and we all performed our roles in a high pressure environment. Ultimately, it was a rewarding experience and, from my own perspective, it was a privilege to serve the Scottish Government throughout one of the most memorable and significant periods in Scottish political history.

On a personal level, I was also particularly fortunate to work closely with Nicola Sturgeon and John Swinney, both of whom I could always turn to for friendship and wise counsel throughout my time in Government. I am disappointed to read of various news reports of 'opposing camps' as far as the SNP is concerned. That does not reflect my experience of advising the SNP and Scottish Government.

MINISTERIAL CODE

A few hours after becoming aware of the complaints, I arranged a conference call with Duncan Hamilton and Kevin Pringle to recount what I had been told. I wanted to seek their advice on whether or not to inform Alex Salmond. It was agreed between us that Mr Salmond required to be informed of the allegations.

It was agreed that I should do so. In the interests of transparency, the only other individual I spoke with was Lorraine Kay, a former Scottish Government civil servant who worked in Mr Salmond's Private Office during his time as First Minister.

I spoke with Alex Salmond over the phone. He informed me that he had, separately, already received a letter from the Scottish Government outlining the allegations of two complainers. He relayed to me, in very high level, a summary of the complaints. During a very brief call (I recall he was in transit at the time) he pointed out that he harboured serious concerns about the process which the Scottish Government had deployed in investigating the complaints.

I am not certain of the exact date but sometime following that call Mr Salmond intimated to me he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints.

On Thursday 29 March 2018 a meeting was arranged with the First Minister in the First Minister's office in the Scottish Parliament. It was a very brief meeting, lasting no longer than fifteen minutes. I relayed to the First Minister a broad summary of the complaints as described to me by Mr Salmond. The First Minister said that the meeting with Alex Salmond was going ahead on Monday 2 April 2018 at her home in Glasgow.

Immediately after the meeting on 29 March, I called Duncan Hamilton who is an Advocate and had been instructed to act for Mr Salmond. Mr Hamilton is also a former MSP and had worked closely with both Mr Salmond and the First Minister in the past. I summarised my discussion with the First Minister. I relayed to him the First Minister had confirmed the invitation to the meeting with Mr Salmond and that it would proceed on 2 April at her home in Glasgow.

I attended the meeting on 2 April 2018 along with Mr Salmond, Duncan Hamilton and also with Liz Lloyd the First Minister's Chief of Staff.

Following brief pleasantries, there was a lengthy private conversation in the First Minister's conservatory between the First Minister and Mr Salmond, one which Mr Hamilton, Ms Lloyd and I were not party to. After which Mr Hamilton, Ms Lloyd and I joined the First Minister and Mr Salmond when there were general discussions on the allegations detailed in the letter sent by the Scottish Government and a reiteration by Mr Salmond of his concerns about the legality of the process being followed.

I am aware that there has been considerable discussion about whether these were 'party' meetings or 'government' meetings. To be frank, as a private individual that was not my concern and nor was it discussed.



On 8 January 2019, Mr Salmond was successful with his Judicial Review challenge of the Scottish Government's handling of those complaints.

The First Minister made a statement to the Scottish Parliament later on 8 January 2019 in response to the judicial review outcome and revealed that she had met and spoken with Mr Salmond on a number of subsequent occasions to the 2 April 2018 meeting.

With reference to any meetings or discussions which occurred between the First Minister and Mr Salmond after the 2 April 2018 meeting, I did not arrange, attend or participate in any of them.

CULTURE

With reference to the matters set out under the heading 'Culture' in the Invitation, I confirm that the totality of my response is set out under the heading 'BACKGROUND' above.

Geoff Aberdein

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Geoff Aberdein <[REDACTED]>
Sent: 21 December 2020 10:57
To: [REDACTED]@gov.scot>
Subject: Private - SGHHC update on submission

Dear [REDACTED]

On a strictly confidential basis, please find attached my revised submission for the SGHHC Inquiry.

On instruction from the Parliament clerks, the submission has been reviewed and revised for publication, to comply with the Committee's legal obligations and in accordance with its statement on handling information.

I thought it would be helpful for Mr Hamilton to see this given his ongoing investigation. This is not for further circulation, beyond Mr Hamilton obviously.

Best wishes

Geoff

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Written submission from Geoff Aberdein

- **CONTEXT**

-

This submission is made in response to the request received from the Convener of the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints ("the Committee"). On instruction from the Parliament clerks, the submission has been reviewed and revised for publication, to comply with the Committee's legal obligations and in accordance with its statement on handling information.

-

- **BACKGROUND**

-

- By way of background I was a Special Adviser to the First Minister of Scotland between May 2007 and November 2014. I was appointed Chief of Staff following the SNP's victory in the 2011 Scottish General Election. I have not been active in front line politics since I left the Scottish Government in November 2014.

-

- In the role of Chief of Staff I was responsible for the Special Adviser team and coordinated political support and advice for the First Minister as well as the entire Ministerial team.

-

- My role was extremely demanding involving long hours. Indeed, the entire Special Adviser team had a strong work ethic and we all performed our roles in a high pressure environment. Ultimately, it was a rewarding experience and, from my own perspective, it was a privilege to serve the Scottish Government throughout one of the most memorable and significant periods in Scottish political history.

-

- On a personal level, I was also particularly fortunate to work closely with Nicola Sturgeon and John Swinney, both of whom I could always turn to for friendship and wise counsel throughout my time in Government. I am disappointed to read of various news reports of 'opposing camps' as far as the SNP is concerned. That does not reflect my experience of advising the SNP and Scottish Government.

-

- **MINISTERIAL CODE**

-

- A few hours after becoming aware of the complaints, I arranged a conference call with Duncan Hamilton and Kevin Pringle to recount what I had been told. I wanted to seek their advice on whether or not to inform Alex Salmond. It was agreed between us that Mr Salmond required to be informed of the allegations.

-

- It was agreed that I should do so. In the interests of transparency, the only other individual I spoke with was Lorraine Kay, a former Scottish Government civil servant who worked in Mr Salmond's Private Office during his time as First Minister.

-

- I spoke with Alex Salmond over the phone. He informed me that he had, separately, already received a letter from the Scottish Government outlining the

allegations of two complainers. He relayed to me, in very high level, a summary of the complaints. During a very brief call (I recall he was in transit at the time) he pointed out that he harboured serious concerns about the process which the Scottish Government had deployed in investigating the complaints.

-
- I am not certain of the exact date but sometime following that call Mr Salmond intimated to me he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints.
-
- On Thursday 29 March 2018 a meeting was arranged with the First Minister in the First Minister's office in the Scottish Parliament. It was a very brief meeting, lasting no longer than fifteen minutes. I relayed to the First Minister a broad summary of the complaints as described to me by Mr Salmond. The First Minister said that the meeting with Alex Salmond was going ahead on Monday 2 April 2018 at her home in Glasgow.
-
- Immediately after the meeting on 29 March, I called Duncan Hamilton who is an Advocate and had been instructed to act for Mr Salmond. Mr Hamilton is also a former MSP and had worked closely with both Mr Salmond and the First Minister in the past. I summarised my discussion with the First Minister. I relayed to him the First Minister had confirmed the invitation to the meeting with Mr Salmond and that it would proceed on 2 April at her home in Glasgow.
-
- I attended the meeting on 2 April 2018 along with Mr Salmond, Duncan Hamilton and also with Liz Lloyd the First Minister's Chief of Staff.
-
- Following brief pleasantries, there was a lengthy private conversation in the First Minister's conservatory between the First Minister and Mr Salmond, one which Mr Hamilton, Ms Lloyd and I were not party to. After which Mr Hamilton, Ms Lloyd and I joined the First Minister and Mr Salmond when there were general discussions on the allegations detailed in the letter sent by the Scottish Government and a reiteration by Mr Salmond of his concerns about the legality of the process being followed.
-
- I am aware that there has been considerable discussion about whether these were 'party' meetings or 'government' meetings. To be frank, as a private individual that was not my concern and nor was it discussed.



-
- On 8 January 2019, Mr Salmond was successful with his Judicial Review challenge of the Scottish Government's handling of those complaints.
-

- The First Minister made a statement to the Scottish Parliament later on 8 January 2019 in response to the judicial review outcome and revealed that she had met and spoken with Mr Salmond on a number of subsequent occasions to the 2 April 2018 meeting.
-
- With reference to any meetings or discussions which occurred between the First Minister and Mr Salmond after the 2 April 2018 meeting, I did not arrange, attend or participate in any of them.
-
- **CULTURE**
-
- With reference to the matters set out under the heading 'Culture' in the Invitation, I confirm that the totality of my response is set out under the heading 'BACKGROUND' above.
-
- **Geoff Aberdein**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 22 January 2021 11:49
To: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
Subject: RE: Personal- correspondence from the Independent Advisor on the Ministerial Code

Hi Liz,

Many thanks, that would be really helpful. I will update Mr Hamilton, and let him know the Committee session has been cancelled.

Unfortunately Mr Hamilton has other commitments on a different project on the 28th and 29th, which may run on into the morning of the 1st. We have another interview arranged for the afternoon of the 1st, time not yet confirmed, so we could look for a time that afternoon (once I have the exact time of the other interview confirmed) or on the morning of the 2nd if that would work for you?

Best wishes,

[REDACTED]
ccj

From: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
Sent: 22 January 2021 11:28
To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: RE: Personal- correspondence from the Independent Advisor on the Ministerial Code

[REDACTED]
ccj

Just to say, the committee cancelled today's session, I'm not clear why. So I should be able to get a response to Mr Hamilton on Monday.

Regarding an interview, I note it's not one of the days you've suggested but next week the 29th would be most convenient (the budget is on the 28th) and would give Mr Hamilton time to consider my response, or any point the following week would currently be fine.

If there are better times for Mr Hamilton, I'm happy to try and move my schedule.

Regards

Liz

Elizabeth Lloyd
Chief of Staff to the First Minister
St Andrew's House

Regent Road
Edinburgh EH1 3DG

Elizabeth.Lloyd@gov.scot

Please note Scottish Ministers, Special advisers and the Permanent Secretary to the Scottish Government are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot for information.

From: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>

Sent: 19 January 2021 14:46

To: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>

Subject: RE: Personal- correspondence from the Independent Advisor on the Ministerial Code

Dear Liz,

Many thanks for your response.

I think Mr Hamilton would be looking for a written response as soon as reasonably possible, and would then use the video interview to discuss any remaining issues. A response shortly after Friday would be great. It may be the case, depending on Mr Hamilton's considerations of any written statement, that the video interview would not be needed; on that basis I would suggest we would want to leave enough of a gap (e.g. a few days) between receiving any written submission and the date of the interview to facilitate this process of consideration.

Best wishes,

From: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>

Sent: 19 January 2021 14:02

To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>

Subject: RE: Personal- correspondence from the Independent Advisor on the Ministerial Code

Thanks for this. Can I just check, Mr Hamilton is looking for a written response to his letter – and a video interview, or is the video interview the response to the letter.

I am expecting to appear at committee on Friday, and if he is looking for a written response, I would offer it shortly afterwards.

[REDACTED]

I am happy to discuss with Mr Hamilton if that would be helpful.

Regards

Liz Lloyd

Elizabeth Lloyd
Chief of Staff to the First Minister

St Andrew's House
Regent Road
Edinburgh EH1 3DG

[REDACTED]

Elizabeth.Lloyd@gov.scot

Please note Scottish Ministers, Special advisers and the Permanent Secretary to the Scottish Government are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot for information.

From: [REDACTED] <[REDACTED]@gov.scot>

Sent: 19 January 2021 10:47

To: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>

Subject: Personal- correspondence from the Independent Advisor on the Ministerial Code

Dear Ms Lloyd,

Please see attached correspondence from Mr Hamilton.

Mr Hamilton would also like to invite you to participate in a video interview, either in the week commencing 25th January or 1st February. If you are content to participate in a discussion, could you let me know your availability on the 25th- 27th January, and in the following week?

Please let me know if you have any questions.

Best wishes,

[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code | Please
contact me on Skype or on [REDACTED]

From: [REDACTED]
Sent: 22 February 2021 13:09
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED]

Dear Douglas,

Further to my email last week, please see response to your questions.

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 19 February 2021 10:08
To: 'Douglas Ross' <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED]

Dear Douglas,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 18 February 2021 21:27
To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: RE: [REDACTED]

Dear [REDACTED]

I was on the point of sending you a lengthy e-mail when your e-mail below came in. The information contained in the attachment plainly has potentially very significant implications to which I will have to give careful consideration. I had, naturally, not anticipated this development and am committed to spending most of tomorrow (and probably a good deal of the weekend) on two other matters with urgent deadlines. While I will return to working on the Ministerial Referral ASAP, I'm afraid that it is likely to be next week before I am able to spend much time on it. In

the meantime, I set out below a shorter version of the e-mail I had been about to send with preliminary observations and queries in relation to the matters on which you have sought my advice.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Happy to discuss any matters arising.

Regards

Douglas
Douglas Ross QC Ampersand Advocates

phone: [REDACTED]
web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



Leading Top Ranked Set in Chambers & Partners and The Legal 500

From: [REDACTED] [@gov.scot](#)>
Sent: 18 February 2021 18:35

To: Douglas Ross <douglas.ross@advocates.org.uk>

Subject: [REDACTED]

Hi Douglas,

Hope you are well.

I know you're looking at some of these issues at the moment and will have much more detail on this, but wanted to bring you up to speed on something we have received today. I've deliberately avoided detail of names etc. in case this causes any issues, but would be happy to discuss over the phone if that would be helpful.

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 22 February 2021 11:55
To: James Hamilton [REDACTED]
Subject: RE: Letter for James Hamilton

Hi James,

I had a go at sorting the images from Mr Salmond's email myself- please see attached which includes Annex A.

Annex B is being very odd but I will get back to you with it shortly I hope!

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 19 February 2021 19:28
To: 'James Hamilton' [REDACTED]
Subject: FW: Letter for James Hamilton

Hi James,

Please see attached response from Mr Salmond. This crossed with your letter which I issued earlier- but probably a good thing it did as it turned out this email was languishing in my junk folder!

Best wishes,

[REDACTED]

From: Alex Salmond <alex@alexsalmond.scot>
Sent: 19 February 2021 07:42
To: [REDACTED]
Subject: Letter for James Hamilton

Dear [REDACTED]

Could you please pass this correspondence to Mr James Hamilton in answer to his recent letter and questions of 9th February?

Best Wishes

Alex Salmond

Mr James Hamilton
Independent Adviser on the Ministerial Code
19 February 2021

Dear Mr Hamilton

Further to your letter of 9th February and my reply of the 11th, I have had the opportunity to consult my records and am now in a position to answer your follow up questions.

Mr Aberdein did phone me on the 9th of March 2018 [REDACTED]
[REDACTED]. It was very much a brief and one way conversation as I was travelling in a car with other people.

We arranged to speak again a few days later (I believe the 14th of March) with further information when we were able to discuss in private what he had been told and discuss what was to be done. I have no doubt that Mr Aberdein told me that the information he had been given [REDACTED] was that there were two complaints being investigated, that one was regarded as a significant complaint and one not, and that he named one of the complainants. [REDACTED]

[REDACTED] I cannot be absolutely certain that Mr Aberdein imparted the specific information on the name of one of the complainants in our first or second conversations but I am 100 per cent certain that he did so in one of these two conversations and that this was the first time that anyone had done so.

At that time I had received a letter from Ms Evans on the 7th March 2018. This outlined purported incidents but not the names of the complainants. Identifying these was difficult because as it transpired every single date or location (where one was given) turned out to be incorrect. I enclose as Appendix A, a passage from one of my solicitors' letters to Ms Evans of 20th July 2018. This specifies the difficulties which were placed in our way in knowing of what I was being accused and by whom. The full letter is published on the SGHHC website. [REDACTED]
[REDACTED]
[REDACTED]

I have already given you permission to speak to my legal representatives to corroborate my account of the First Minister's later conversation with me in July 2018. This also applies to the information given to me by Geoff Aberdein in March as I know he had spoken to my advocate Duncan Hamilton at that time. I have, therefore, intimated to Mr Hamilton that in order to confirm factual events and recollections relevant to your investigations I am content that he provide answers to any questions you may have.

In my letter I mentioned to you that I had come across further information when preparing to give evidence to the parliamentary Committee. This concerns the pleadings made by Government in the Open Record of the Judicial Review in

December 2018 (which said Record has been published on the SGHHC website as part of their Inquiry) which also contains the claim subsequently made to parliament that the first knowledge the First Minister had of complaints against me was in April 2018. I enclose these at Appendix B. As you will see the terms of this are quite specific and the First Minister was the “interested party” in the case and responsible for these pleadings to court. It says “she first became aware of the existence of an investigation into the petitioner’s conduct in April 2018 when the petitioner made her so aware”

I know this not to be true and would further add that if indeed the First Minister had “forgotten” about the meeting in her office on March 29th 2018 only to be reminded of it shortly after her parliamentary statement of January 2019 (FM written evidence Parliamentary Inquiry Annex A) then her proper course of action under the Ministerial Code was to correct the parliamentary record at the earliest opportunity, not 18 months later after a report on the 29th March meeting had appeared on Sky Television on Monday 27th July 2020. Instead over that period it was officially and publicly denied that there had been any such meeting covering this subject of complaints, including in response to the Sky report itself;

A Scottish government spokesperson told Sky News that Ms Sturgeon does not dispute that the 29 March meeting took place but refutes the suggestion that it involved discussion of the Scottish government's Salmond inquiry.

Sky News asked the Scottish government several questions regarding the meeting on 29 March 2018.

We asked if the Alex Salmond investigation was indeed discussed. A spokesperson replied: "The first minister stands by her statement to parliament".

The first public acknowledgement was within the terms of reference to this investigation in answer to an arranged parliamentary question on 4th August 2020.

I am at your disposal if you require further questions or to speak directly.

Yours for Scotland

Rt Hon Alex Salmond

APPENDIX A -Extract from letter

APPENDIX B - Open Record

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1. Our client has had no access to the statements of the complainers or of any other witnesses;
2. He has no means available to him to fully investigate: the circumstances in which these complaints came to be made at the same time despite the years which have elapsed since the alleged conduct occurred; how they came to be made so soon after the introduction of the 2017 Procedure; [Redacted]
[Redacted]
3. He was not given the IO's preliminary report or any other documents connected to the allegations;
4. From the outset he was denied the opportunity to consult official records and diary entries. In the recent past he was able to obtain his official diaries through a subject data request. This has enabled him to provide a limited further response to some of the complaints. The copies of the diary provided to him are redacted thereby denying our client access to the names of persons who he might otherwise have approached as potential witnesses;
5. He was not been provided with a witness list;
6. He was prohibited from contacting witnesses who are civil servants;
7. He was prevented from putting the content of the allegations to prospective witnesses;
8. He was not allowed to present his own evidence but instead was expected to rely on the IO to select and present his evidence as she saw fit;
9. The IO has clear conflicts of interests. First, as the person who gathers and presents the evidence on which the complaints are based and as the person who is supposed to prepare and present evidence for the former minister. Second, as the person who is responsible for investigating the complaints and as the person responsible for making purported findings in fact.
10. Our client is not allowed to see the evidence for or against him or the IO's revised report before you purport to make a decision;
11. He is denied the opportunity or the means to make submissions to you before you purport to make the decision;
12. The prejudice suffered by our client from the procedural defects summarised above are exacerbated by the fact that the complaints concern events which are alleged to have occurred several years ago.

Yours faithfully

[Redacted]

22

Solicitor Advocate

FW: Private - James Hamilton investigation under the Ministerial Code

From: [REDACTED] <[REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]@[REDACTED]>
Date: Mon, 22 Feb 2021 09:30:15 +0000

Hi James,

The Committee have been in touch to let me know they will be publishing Mr Salmond's submission, and that the version they have includes correspondence with you.

I don't think we've seen exactly what this covers so have asked if they were able to provide any more detail.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@parliament.scot>
Sent: 22 February 2021 09:21
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

Hi [REDACTED]

I hope you had a good weekend.

I am in touch on another matter this morning, we are moving towards publication of the submission from Alex Salmond to the ministerial code phase of the inquiry and I am aware this was also a submission to Mr Hamilton to inform his work.

As you are aware that submission includes emails to and from Mr Hamilton in the appendices and so I wanted to inform Mr Hamilton of the intention to publish these emails before doing so.

The submission may be published at the end of today at the earliest,

Kind regards

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>
Sent: Friday, February 19, 2021 4:57 PM
To: [REDACTED] <[REDACTED]@parliament.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

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Hi [REDACTED],

I'm well, thanks, hope you are ok.

Mr Hamilton has asked that I pass on the following update:

Best wishes,

[REDACTED]

I am nearing the end of my investigation and intend to produce my final report as soon as possible. As noted in the PQ response setting out the details of my remit, if required, the report will be redacted to ensure compliance with the relevant court orders, and so there are various checks that need to take place on the report once drafted. To a large extent, the timescales of this are out of my hands. At this point I am unable to indicate an exact timescale within which these various stages of work will be completed.

I understand that, as is usual practice for Ministerial Code reports, the Scottish Government will co-ordinate the publication of the report.

From: [REDACTED] <[REDACTED]@parliament.scot>
Sent: 19 February 2021 12:06
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

Hi [REDACTED]

I hope you are well, I was hoping you may have more specific timescales for the publication of James Hamilton's decision report on the self referral under the ministerial code?

A response on Monday or Tuesday would be much appreciated so I can update the Committee on Wednesday (I anticipate members will ask again then so I'd like to have the information to hand)

Kind regards

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>
Sent: Monday, February 1, 2021 4:37 PM
To: [REDACTED] <[REDACTED]@parliament.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

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Hi [REDACTED],

No problem, before the election is definitely the intention at this point.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@parliament.scot>
Sent: 01 February 2021 14:56
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

Thanks [REDACTED], just to confirm are you in a position to say before the election is the intention (I appreciate realistically that is feb / march due to purdah rules).

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>
Sent: Monday, February 1, 2021 2:15 PM
To: [REDACTED] <[REDACTED]@parliament.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

CAUTION: This e-mail originated from outside of The Scottish Parliament. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi [REDACTED],

Apologies, I have been sorting out various things relating to video interviews today.

I think the information I provided last week is all that can really go to the committee at this stage- Mr Hamilton is keen to progress things as soon as he can, but I couldn't offer a definite view on whether that means this month or next is more likely for publication.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@parliament.scot>
Sent: 01 February 2021 13:33
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

Hi [REDACTED]

Hope you got some downtime over the weekend,

I am just putting together a briefing for the Convener for tomorrow's committee meeting – I can add on details in relation to James Hamilton's work and the associated timescales later today but just wanted to confirm at this stage that you will be able to provide a bit more detail on indicative timescales during the course of today?

Many thanks

[REDACTED]

From: [REDACTED]
Sent: Friday, January 29, 2021 11:18 AM
To: '[REDACTED]@gov.scot' <[REDACTED]@gov.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

Thanks [REDACTED]

That is helpful general context thanks for putting that together,

Couple of further points, do you have a sense of whether Mr Hamilton considers February or March as a likely timescale for his report? And has he considered whether he can publish when purdah rules come into force (end march)?

The Committee I think assumes the report will be issued in the next month or two and if it is a possibility that that is not the case I would like to be able to inform them,

Perhaps you could come back to me on these specific points before the committee meets on Tuesday morning, so sometime on Monday?

Have a good weekend

[REDACTED]

From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>
Sent: Friday, January 29, 2021 11:11 AM
To: [REDACTED] <[REDACTED]@parliament.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

CAUTION: This e-mail originated from outside of The Scottish Parliament. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi [REDACTED],

Thank you for your email.

As you know, Mr. Hamilton has sought written submissions from a range of participants.

Mr. Hamilton is also currently undertaking video interviews with some participants where he has additional questions he wishes to ask them.

Mr. Hamilton intends to complete his report as soon as possible, and is conscious that the Scottish Parliament election is scheduled to take place in early May 2021.

Mr Hamilton is aware that it is intended that his report will be published, and will take the necessary steps to ensure that his report is compliant with any relevant court orders.

I hope this information is helpful- please let me know if you have any other questions.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@parliament.scot>
Sent: 27 January 2021 11:51
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

Many thanks [REDACTED], if I could have a response by say Friday lunchtime that would be really helpful,

Kind regards

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>
Sent: Wednesday, January 27, 2021 11:46 AM
To: [REDACTED] <[REDACTED]@parliament.scot>
Subject: RE: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

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Dear [REDACTED],

I'm well thanks, hope everything is ok with you.

I have passed your email on to Mr Hamilton and we will get back to you shortly. Is there a specific time by which it would be useful to have a response?

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@parliament.scot>
Sent: 27 January 2021 10:32
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Private - James Hamilton investigation under the Ministerial Code
Sensitivity: Private

Dear [REDACTED]

I hope you are well.

I clerk the SGHHC Committee and the Committee discussed Mr Hamilton's deliberations on the First Minister's self-referral under the Ministerial Code yesterday. The Committee would like to know what the estimated date is for Mr Hamilton to reach a decision. If you are unable to provide a date, an accurate a timeframe for this decision and the associated publication of his report would be much appreciated. I am aware he received Mr Salmond's submission just before New Year and that he has sought and received statements for others. Will there be a stage where he interviews relevant people? I assume this will impact on the timing of his report. In addition, I assume his report will be published as is standard practice? I appreciate there will be substantiating evidence that may not be able to be published given the subject matter and relevant legal obligations that must be complied with.

An indication as to when the decision and associated report will be available would be very much appreciated as soon as you are able,

Kind regards

[REDACTED]

Clerk
SGHHC Committee

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From: [REDACTED]

Sent: 22 February 2021 13:37

To: 'James Hamilton' [REDACTED]

Subject: Various documents

Hi James,

As discussed, please see collated documents as discussed this morning. I will prepare an updated version of the catalogue of written evidence but in the meantime please see attached:

- - catalogue of written submissions as sent in December
[REDACTED]
 - court transcript
[REDACTED]
 - LL response to supplementary questions post interview
[REDACTED]

Best wishes,

[REDACTED]

THE HIGH COURT OF JUSTICIARY AT EDINBURGH

LORD JUSTICE CLERK

EXTRACT OF EVIDENCE

i.c.

H M ADVOCATE

v

ALEXANDER ELLIOT ANDERSON SALMOND

18TH MARCH 2020

APPEARING:

Mr A Prentice QC, Advocate Depute, et Ms L Dalziel for the Crown

Dean of Faculty, S MacCall QC et C Anderson, Solicitor for the Accused

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(sworn)	
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DEAN OF FACULTY	2

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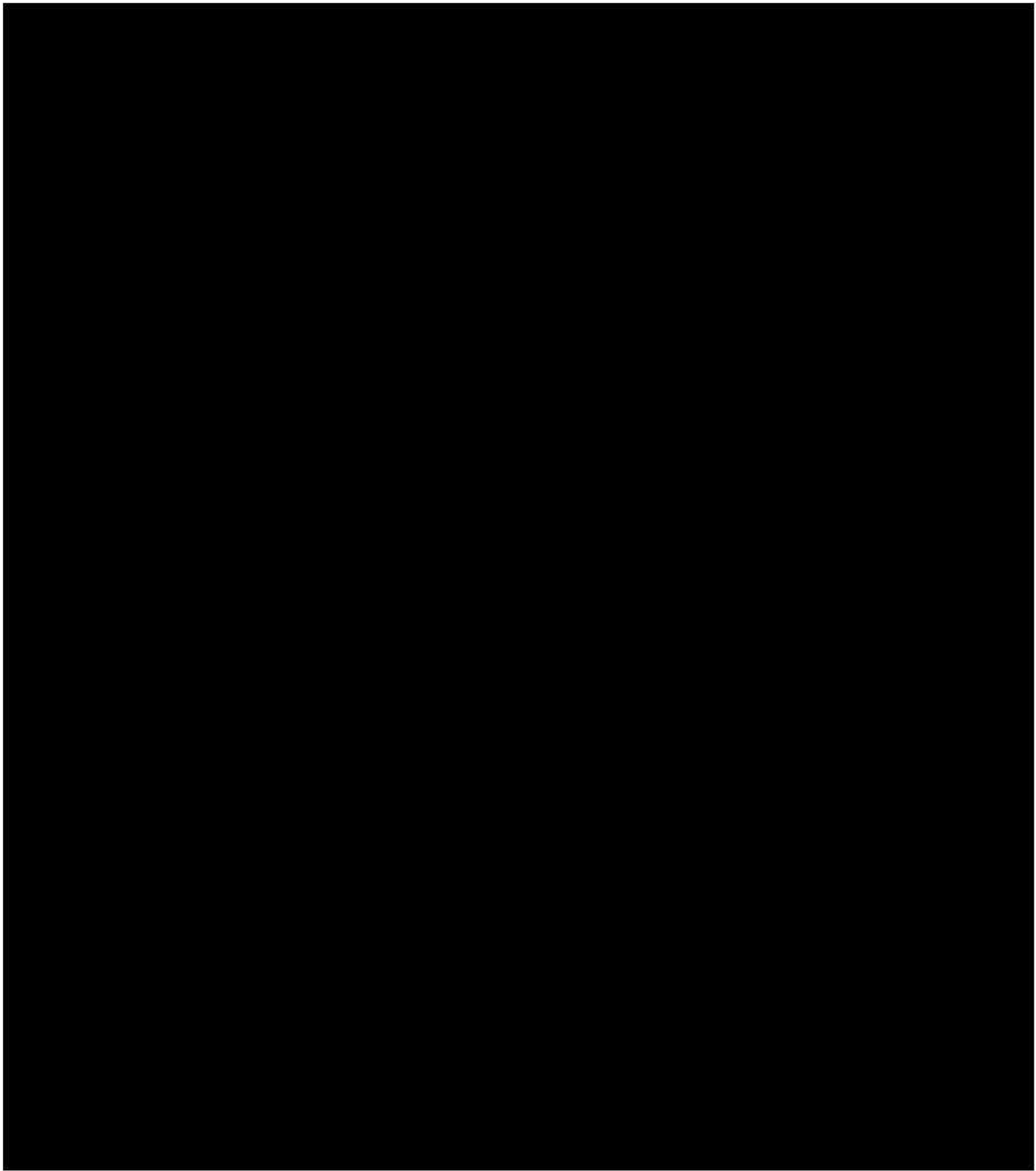
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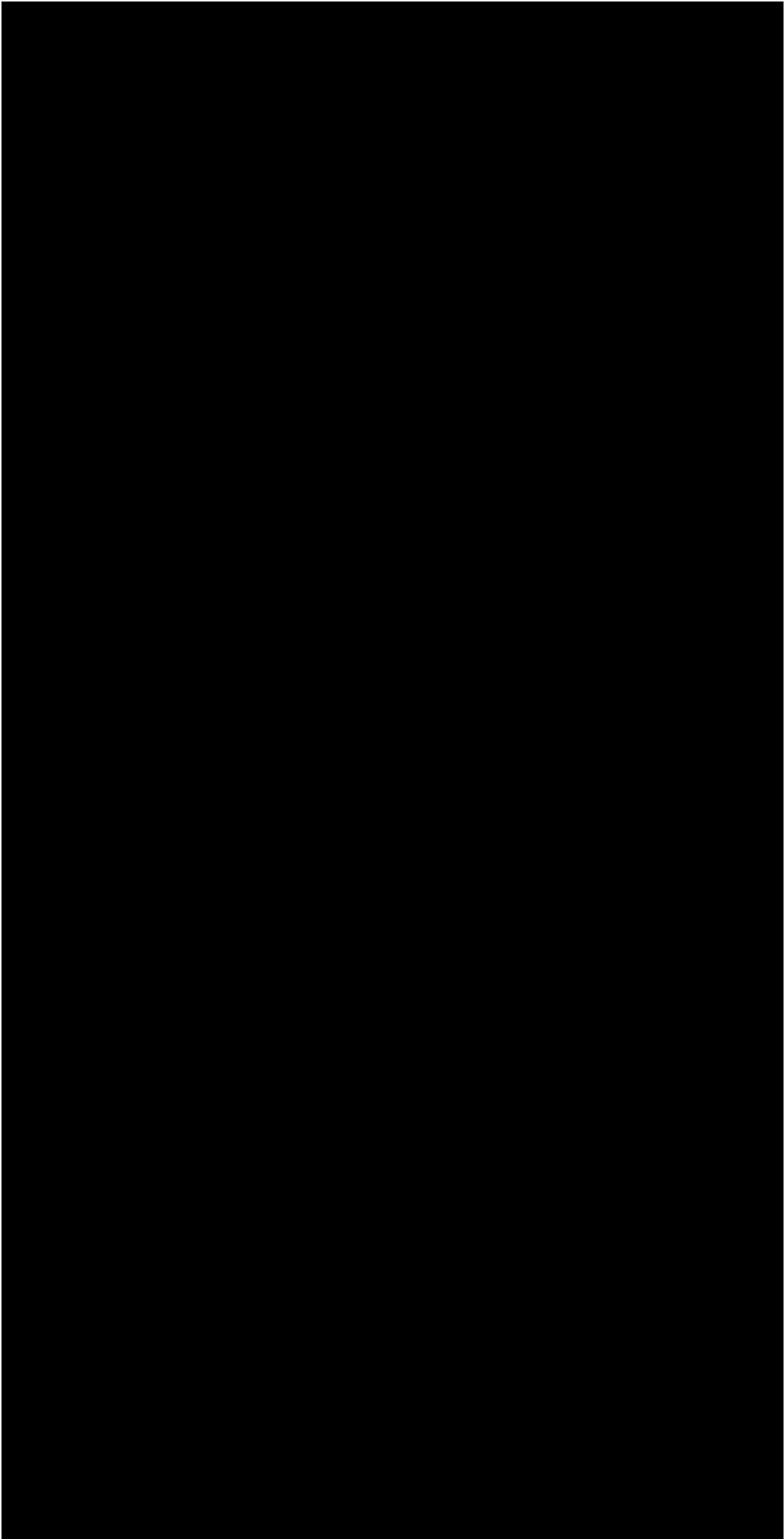
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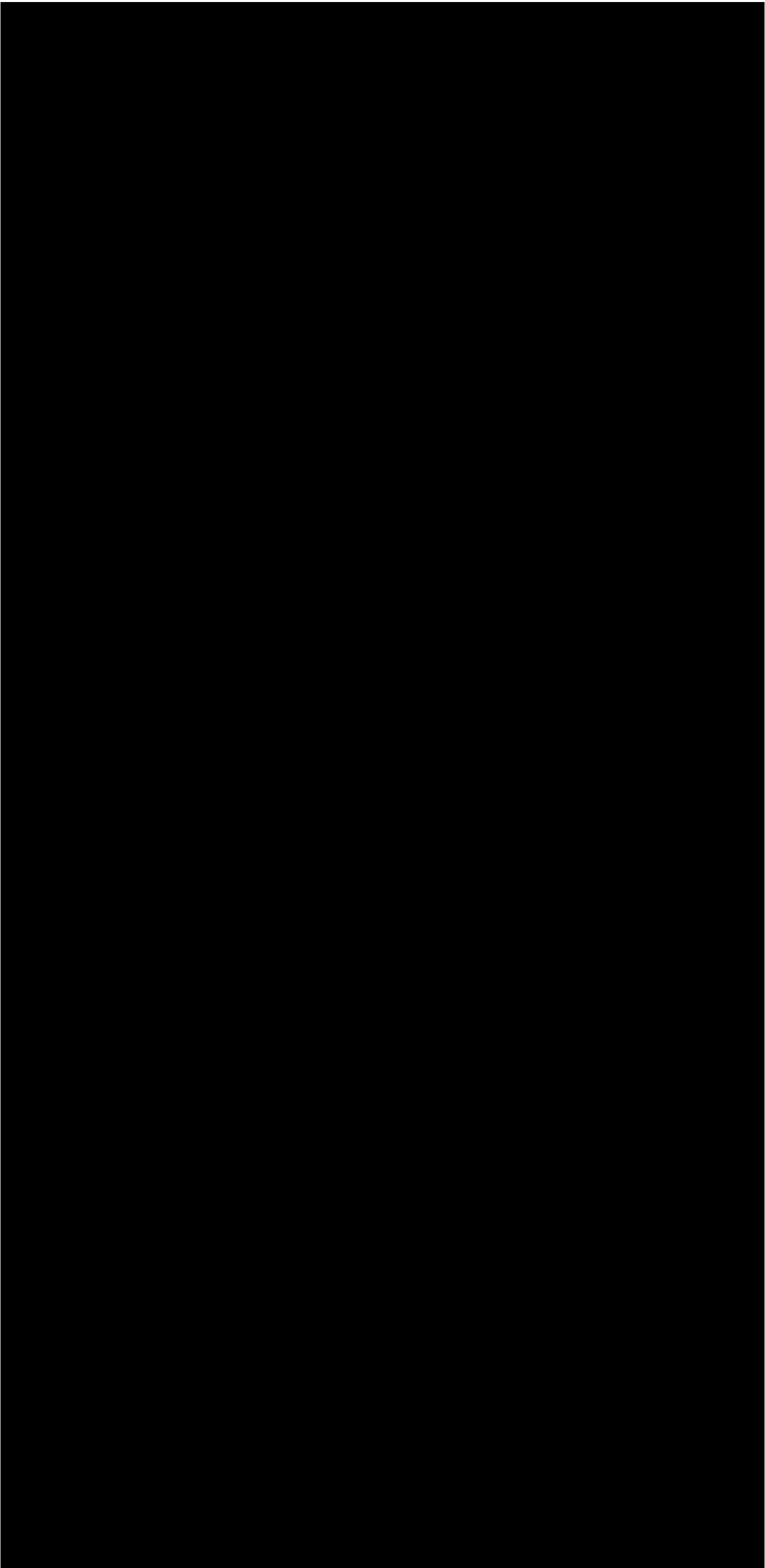
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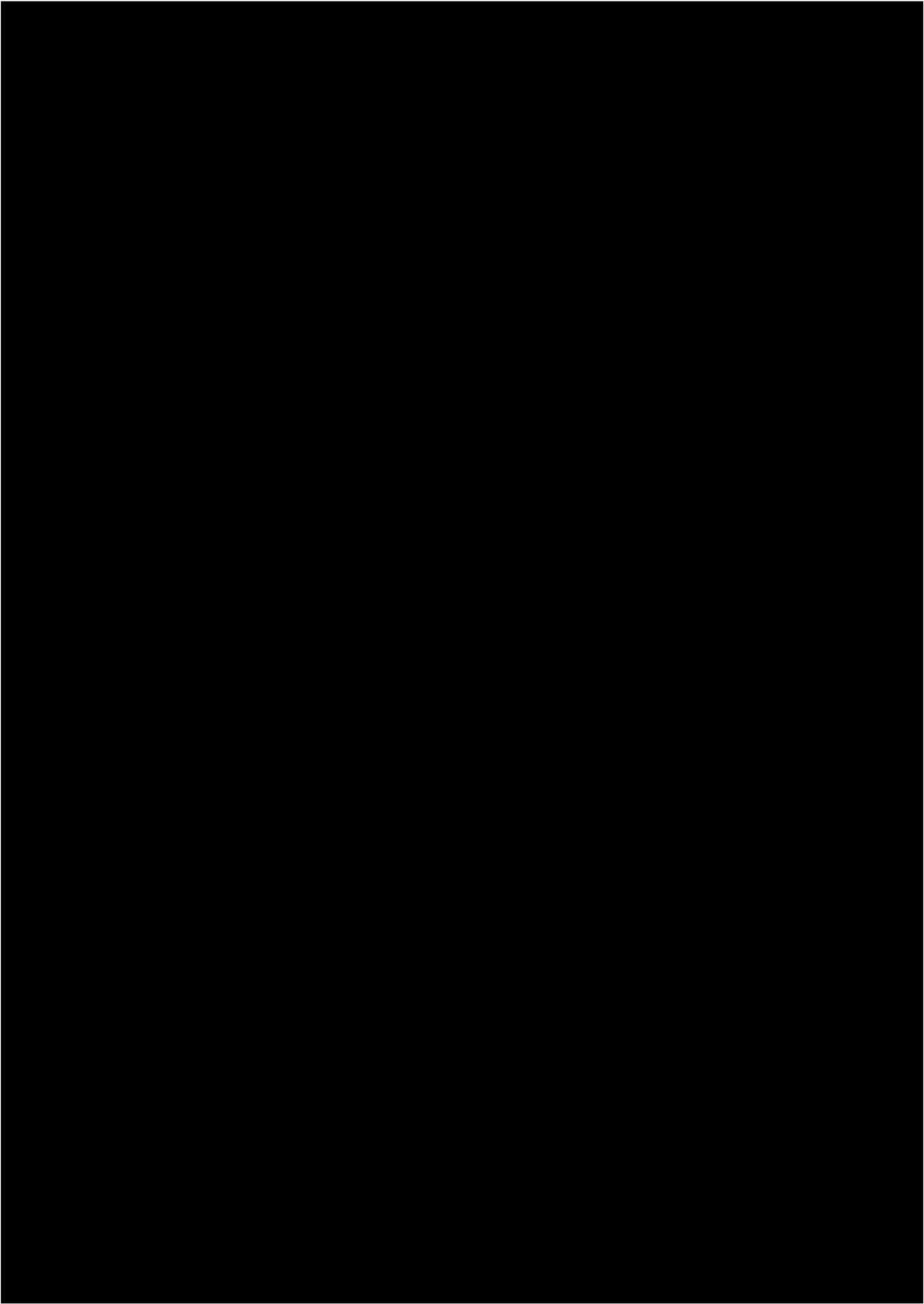
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From: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>

Sent: 09 February 2021 11:43

To: [REDACTED]

Subject: RE: Mr Hamilton- short supplementary question

[REDACTED]

Responses below – let me know if you need more

Thanks

Liz

Elizabeth Lloyd
Chief of Staff to the First Minister
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel: 0131 244 5647
Mobile: [REDACTED]
Elizabeth.Lloyd@gov.scot

Please note Scottish Ministers, Special advisers and the Permanent Secretary to the Scottish Government are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot for information.

From: [REDACTED]

Sent: 08 February 2021 17:50

To: Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>

Subject: Mr Hamilton- short supplementary question

Dear Liz,

Thank you for the information you provided last week. I have nearly finished transcribing the interview and should be able to share the transcript tomorrow.

Mr Hamilton has a couple of very minor supplementary questions he has asked me to pass on, as set out below.

[REDACTED]

[REDACTED]

[REDACTED]

Would it be possible to provide short answers on these this week?

Happy to discuss.

Best wishes,

[REDACTED]

[REDACTED]

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Covering email:

[REDACTED]

Please find statement attached. I have italicised areas connected to my letter of yesterday, though there are connections with other sections, which will I expect be evident to Mr Hamilton.

As before, if it would be helpful to provide more information on that aspect, I am happy to speak directly to Mr Hamilton.

Best wishes

Liz

Statement

Mr Hamilton,

Please find below, brief answers to your specific questions and an accompanying general statement. I have addressed questions 2.5, 3 and 4 in my general statement.

My statement also expands on the points below, whilst also focussing on matters concerning the ministerial code.

[REDACTED]

I hope the following statement addresses all the questions you have asked, but would be happy to provide any clarification or further information you require.

General Statement

As a Special Adviser I am able to engage on ministers behalf in what would for permanent civil servants be political discussions. In particular this allows party liaison and attendance at party meetings. As Chief of Staff I advise the First Minister both on government policy and on political matters. [REDACTED]

Before detailing the actions I took, my role and the consideration given to aspects of the ministerial code, I can confirm that I had no discussion and provided no advice, written or oral, to the Permanent Secretary on the meetings or contacts considered within your remit. I discussed some points with the First Minister, and it could be said those discussions included the provision of oral advice, but provided no written advice.

In addition I can confirm that I took no action within government in relation to these matters, *with the exception of making SG counsel aware of them during the period of the judicial review*, and did not seek to bring any influence to bear on the Scottish Government investigation into complaints of sexual harassment in relation to Mr Salmond, rather it was a determination to ensure I did not even inadvertently influence the investigation or compromise it's integrity that has led to questions being raised under 4.22 and 4.23 of the ministerial code.

I can also confirm that prior to the conclusion of the investigation into Mr Salmond I was not informed of the complaints or the investigation by Scottish Government officials and had no contact with either of the complainants. At the conclusion of the investigation I was made aware of the police referral, and the intention to issue a media statement, prior to Mr Salmond intimating legal proceedings against the Government and from memory threatening legal proceedings against the First Minister.

In relation to the meetings and contacts that are the subject of the self-referral, *I was present on* [REDACTED] April 2nd 2018, I was in the room with the First Minister for the duration of the phonecall on April 23rd and heard her contribution in full, and parts of Mr Salmond's contribution. I briefly interrupted the conversation on the 7th June, in order to advise the First Minister that her next engagement was waiting, and though I was not present, the First Minister made me aware of the content of her discussions on the 14th July and 18th July with Mr Salmond. I am not aware of any other contacts between the First Minister and Mr Salmond (beyond those published alongside her evidence to the Scottish Parliament Committee) or the First Minister and Mr Aberdeen.

In relation to the meeting of the 2nd April, it was attended by myself and the First Minister at her personal address. Mr Salmond attended, with Mr Aberdeen and an individual who was acting as a legal adviser to Mr Salmond.. The legal adviser had not been expected to attend, and it was only as Mr Aberdeen and Mr Salmond were due to arrive that Mr Aberdeen informed me that they would be joining them.

The individual was well known to both myself and the First Minister through longstanding political and personal connections, and I was aware he was regularly called on to provide informal advice to Mr Salmond, particularly when he faced legal or political difficulties.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] even this was a political and personal discussion it was organised so as not to require the use of government resources, which led to it taking place at the First Minister's personal home.

As Mr Aberdeen indicated he would be accompanying Mr Salmond, and as it was clear Mr Salmond had an issue to discuss that would have political consequences, I considered it appropriate that I attend. I also had some concerns as to what Mr Salmond might want from the meeting. I had only ever known Mr Salmond to be someone who expected others to solve problems for him, and if he was in difficulty I suspected he might make requests of the First Minister and wanted to ensure she had advice.

The discussion on 2nd April took place in two parts. On arrival Mr Salmond asked to speak privately to the First Minister. During this time, Mr Aberdeen and Mr Salmond's legal adviser showed me a copy of a letter from the Permanent Secretary and annex detailing complaints against Mr Salmond. They retained the copy of the letter and annex.

[REDACTED]

[REDACTED]

[REDACTED]

I made no record of this meeting. Following its conclusion, I remained briefly with the FM and we discussed whether we had an obligation to report it to the Permanent Secretary or record it under the ministerial code. Whilst it did not seem to me that the content was subject to the code, as the conversation had largely focussed on party matters and personal wellbeing, and Mr Salmond had not told the First Minister anything that the government did not know, but had rather shared with the First Minister information the government had given him, the more relevant question seemed to be whether we should inform the Permanent Secretary.

Having had some limited involvement with the development of the procedure I understood that it specifically did not provide for a First Minister to be informed of complaints against a former minister because there was no legitimate reason to share that information, but also because it ensured that no investigation or outcome could be considered by complainants to be influenced by political interests. I understood this position had been taken to build confidence amongst employees in the independence of the system. Whilst I had no doubt the Permanent Secretary would be independent in her duties, it seemed to me that there was more risk to the integrity and confidentiality of the investigation whether real or perceived from informing the Permanent Secretary of our awareness, than of not doing so.

Equally whilst I didn't consider it to fall under 4.22 or 4.23 of the code, reflecting on it now, I do not know how it would have been possible to report under the current system, without jeopardising the confidentiality of the investigation. Not only would a subject matter have been required, but engagement between Mr Salmond and the First Minister would at that time have attracted public scrutiny, which in generating questions as to the purpose of the meeting, would again have either put the confidentiality of the investigation at risk, or put the First Minister in a position of having to give a less than frank response if asked what the meeting was about, in the interests of protecting that confidentiality.

My judgement, in relation to informing the Permanent Secretary, changed when Mr Salmond continued to contact the First Minister and made explicit asks and implicit threats as well as informing her of prospective legal action.

On the evening of 23rd April the First Minister took a call from Mr Salmond in her private study in Bute House in the evening of the 23rd, shortly before attending a dinner engagement. I was in the study throughout and heard her contributions as well as some of his. Mr Salmond was asking the First Minister to tell the Permanent Secretary that she knew of the investigation in order to encourage the Permanent Secretary to agree to his request for mediation. The First Minister was firm that she would not do so. This conversation supported the earlier decision not to tell the Permanent Secretary.

On or around the 4th or 5th of June, the First Minister showed me a message she had received from Mr Salmond which appeared to indicate that he intended to take legal action against the government. Having worked around Mr Salmond over a number of years, I felt the message had a threatening tone which I recognised and was intended in my view to pressure the First Minister into taking action to in some way suppress or block the inquiry and prevent it concluding. The message also misrepresented the April 2nd meeting.

The First Minister indicated that she thought that having been informed of potential legal action she had a duty to share that with the government. I also felt that given the tone of the communication and the misrepresentation within it, that anything other than informing the Permanent Secretary, could at a later date have led to an undermining of the confidence in the investigation. We again discussed recording the meetings with private office for reporting under the Ministerial code, but given the same confidentiality risk remained and that the First Minister had decided to inform the Permanent Secretary, I felt that all necessary and practical action had been taken. The letter, as far as I am aware, was held by the Permanent Secretary's office.

I did not attend the meeting on 7th June in Aberdeen, which I understood was to inform Mr Salmond that the Permanent Secretary had been informed of the contact, and to re-iterate that the First Minister would not make any requests of her in relation to the investigation. I arrived at the hotel once the conversation was underway, but interrupted the meeting which I do not believe was long as the First Minister had informed me that he was running late, to remind the First Minister of her next engagement. I was in Aberdeen to attend party conference as permitted of Special Advisers.

The First Minister reported to me that he had sought to raise the matter of a Judicial Review and push for her to intervene and that she had, as she had indicated she would, told him that she had informed the Permanent Secretary of his contact and would not act on his behalf in any way.

Shortly after conference, I asked the First Minister if she had informed the Permanent Secretary of the conversation and she indicated that she had.

I was not present at the meeting on the 14th July or call on the 18th July, [REDACTED]

I had approached Mr Aberdein the previous week to ask if he knew if the investigation was coming to an end. My motivation was that I knew the First Minister was considering going on holiday and if it was going to conclude and Mr Salmond take any action, I felt she would not have wanted to be out of the country given the potential for party political ramifications. He indicated that he didn't know and that Mr Salmond was seeking arbitration. [REDACTED]

Following the meeting on the 14th July, the First Minister told me that she was concerned that while she had had no involvement, Mr Salmond had formed an inaccurate impression that she was in some way blocking his request for arbitration, and could not accept that the First Minister was not acting as he wanted her to. My understanding is that the First Minister corrected that view and again informed the Permanent Secretary. My understanding of the call on the 18th was to try to end any discussion of this issue on a more amicable basis.

In relation to the reporting and recording of information, I have set out above the consideration, advice and decisions made regarding reporting under the ministerial code and reporting matters to the Permanent Secretary. I do not believe that there were any other appropriate options available to the First Minister or myself, if we were to both protect the confidentiality of the investigation and avoid compromising or even unwittingly appearing to compromise its integrity.

On becoming aware that Mr Salmond had issued a statement confirming the fact of the investigation to the media in August 2018, there was no hesitation in addressing the fact that there had been contact with Mr Salmond.

This matter had already been recorded with the Permanent Secretary at the first point at which, in my view, on the balance of risk to the investigation process, it became appropriate to do so.

In responding to Mr Salmond's confirmation of the investigation, the First Minister volunteered in a media interview in August 2018 that she had been made aware of the complaints by him earlier in the year. She was under no pressure to do so. I supported her decision to do that, and when asked by the First Minister shortly before the interview, when the meeting was, I recalled it as being Easter Monday, the 2nd April.

I subsequently briefed, with the First Minister's endorsement, Scottish Government counsel in October 2018 on the facts of the First Minister's engagement with Mr Salmond [REDACTED]

The First Minister also pro-actively set out, with my support, the contact she had had with Mr Salmond to Parliament in January 2019 following the conclusion of the Judicial Review, a decision which led to this referral. Again, she was under no pressure to do that, but we both considered it right that whilst the meetings were personal and political in nature, there should be transparency around them, despite for the reasons I have set out above, not considering that recording was required and not having, at the time, a confidential means of doing so without compromising the integrity of the process.

I hope this statement is of assistance to you, and stand ready to address any further queries you may have.

Liz Lloyd

Participant	Date received	Response
First Minister	9 October 2020	Attached as PDF
Permanent Secretary	7 October 2020	Attached as PDFs
Liz Lloyd	9 October 2020 9 October. 12 November 2020	Background documents provided on 9 October- attached as a password document. Main document attached as a password protected word document. Supplementary content as follows Firstly an entirely minor point – in my statement I have made reference to Mr Salmond’s timekeeping. A drafting error remains in the statement and the sentence should read as below “2.6)I made no record of the duration of the meeting, though I believe they arrived later than the arranged time, which was not normal for Mr Salmond. I would estimate no more than two hours. “ [REDACTED]
Geoff Aberdein	28 October 2020	Attached as password protected file.
Duncan Hamilton	25 November 2020	Many thanks for this letter which I have considered carefully. I regret that my professional duties and obligations do not permit me to assist in providing the information sought. I trust that Mr Hamilton will understand that position.
Kevin Pringle	27 November 2020	EMAILED VIA [REDACTED] Thank you for your letter of 25 November. I can confirm that I took part in the telephone conversation described by Geoff Aberdein. [REDACTED] [REDACTED] Mr Aberdein was seeking advice as to whether to inform Mr Salmond, and it was agreed that it was fair he should do so. [REDACTED] [REDACTED] He did not have detailed knowledge of the allegations that he was able to share, which I learned of subsequently from Mr Salmond himself, as well as from information as it entered the public domain. I hope that this is of assistance.
David Clegg	3 December 2020	RE: SCOTTISH MINISTERIAL CODE: FIRST MINISTER’S SELF-REFERRAL Mr Hamilton, Apologies for the delay in responding. I did not receive your email and, as our entire organisation is currently home working, only received the paper copy of your inquiry today. I can confirm that I contacted Geoff Aberdein on January 14, 2019 to ascertain if he was the “intermediary” who had set up the meeting between Nicola Sturgeon and Alex Salmond on April 2, 2018, at the First Minister’s home.

		He confirmed this was the case and subsequently sent me an email with more details. [REDACTED] [REDACTED] [REDACTED] I have nothing further of note to add about my interactions with Mr Aberdeen that would be relevant to your inquiry. [REDACTED] [REDACTED] In terms of the remit of your inquiry, the only other observation I would make is that during my extensive investigations into these matters in January 2019 nobody I spoke to referred to the meeting between Ms Sturgeon and Mr Aberdeen on March 29, 2018. The first I learnt of this meeting was during Mr Aberdeen's testimony in the criminal trial of Mr Salmond. Sorry I can't be of more help. If you require any further information from me please do not hesitate to get in touch via this email address. Yours sincerely,
Stuart Nicolson	7 December 2020	<i>Thank you for your letter of November 25th.</i> <i>In answer to your specific question,</i> [REDACTED] [REDACTED] <i>With regard to your other question, I do not have any further information I can provide</i> [REDACTED] [REDACTED]
Peter Murrell	14 December 2020	I refer to your letter of 25 November 2020. I can confirm that as set out in my written evidence to the Scottish Parliament committee, I was aware of the meeting taking place on 2 April between the First Minister and Mr Salmond but I was not present at it and did not participate in it. Following my oral evidence session last week there are two additional points that I would draw to your attention, First, I returned home while Mr Salmond was still present. I briefly acknowledged the others who were present. However, Mr Salmond and the First Minister were in another room and I did not see or speak to them. Second, there has been a suggestion that my oral evidence contradicted statements by the First Minister about the nature of the meetings she had with Mr Salmond. In fact, my evidence was simply reflecting my own reading of Nicola's written evidence to the Committee. It is not for me to speculate on, or determine, the basis or nature of the meetings as I was not party to them. I trust these additional points are helpful.

From: [REDACTED]
Sent: 22 March 2021 14:44
To: [REDACTED] Henderson G (Gavin)
<Gavin.Henderson@gov.scot>
Cc: [REDACTED]
Subject: RE: Hamilton factual points

[REDACTED]

Apologies, I think the amendment for Peter Murrell should be Chief Executive **Officer**, rather than just Chief Executive

Best wishes

[REDACTED]

Organisational Continuity Team
1W.10, St Andrews House, Regent Road, Edinburgh, EH1 3DG
(0131 244 46075 [REDACTED])

Please note, I am currently working from home

From: [REDACTED]
Sent: 22 March 2021 14:29
To: Henderson G (Gavin) <Gavin.Henderson@gov.scot>
Cc: [REDACTED]
Subject: RE: Hamilton factual points

Hi Gavin,

I have attached a version with these adjustments made. Just to note that Lorraine Kay is not referred to by name in paragraph 4.21, so I think the comment about "Ms" might have got confused with the other part of the report where Lorraine Kay is referred to by name.

Best wishes,

[REDACTED]

From: Henderson G (Gavin) <Gavin.Henderson@gov.scot>
Sent: 22 March 2021 14:06
To: [REDACTED]
Cc: [REDACTED]
Subject: Hamilton factual points

[REDACTED],

As discussed:

- para 8.1 - Peter Murrell is the Chief Executive Officer of the SNP not the chairman
- page 6 - Stuart Nicolson's name has been misspelled as "Nicholson".

In relation to Lorraine Kay:

- 4.21 - If a title is required to be used, please use Ms, not Mrs.

- 4.21

[REDACTED] (Geoff has made the same point)

Gavin

Gavin Henderson | Deputy Director | OCT

Re: Hamilton Inquiry

From: [REDACTED]@global.com>
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: Glasgow-News <glasgow-news-team@global.com>
Date: Mon, 22 Mar 2021 11:21:19 +0000

Thanks for that [REDACTED], it's appreciated. [REDACTED]
From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>
Sent: 22 March 2021 11:15
To: [REDACTED]@global.com>
Cc: Glasgow-News <Glasgow-News-Team@global.com>
Subject: RE: Hamilton Inquiry

Hi [REDACTED]

I've been checking with Mr Hamilton if there is anything he wishes to release as a media line concerning the handover of the report to the Scottish Government, and will let you know if there is a line or any comment he wishes to make.

However, anything about the process- e.g. whether there will be a press release, where the report would be published- should be directed to the Scottish Government who are handling all these arrangements.

Best wishes,

[REDACTED]

From: [REDACTED]@global.com>
Sent: 22 March 2021 11:11
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: Glasgow-News <Glasgow-News-Team@global.com>
Subject: Hamilton Inquiry

Hi [REDACTED],

I appreciate it may not be clear exactly when the Inquiry's report will be released today (if indeed it is released today), but are you able to confirm how it will be released? Is there a specific url that we should keep an eye on, or will there be a press release?

Thanks,

[REDACTED]

Broadcast Journalist

[REDACTED]

[REDACTED]@global.com

[REDACTED]@heartscotnews



5th Floor, 1 West Regent Street,
Glasgow G2 1RW

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RE: FW: Global / Hamilton Inquiry

From: [REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]@[REDACTED]>
Date: Mon, 22 Mar 2021 14:57:07 +0000

I think the publication will be before 4pm.

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 22 March 2021 13:59
To: [REDACTED]@gov.scot>
Subject: Re: FW: Global / Hamilton Inquiry

Ok, thanks.

On Mon 22 Mar 2021 at 13:57 <[REDACTED]@gov.scot> wrote:

Hi James,

I'm not 100% sure when but will check. There's a couple of fact checking things about the report that I will pick up- one reference to Mr Murrell's job title is wrong, so I will update that and send SG a revised document.

The details are for a teleconference account, so phone would be necessary I think.

Best wishes,

[REDACTED]

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 22 March 2021 13:43
To: [REDACTED]@gov.scot>
Subject: Re: FW: Global / Hamilton Inquiry

Hi [REDACTED]

What time are they publishing?

The teleconference- do I use the phone or computer?

James

On Mon, 22 Mar 2021 at 11:44, <[REDACTED]@gov.scot> wrote:

No problem.

The teleconference details for the call with DFM are

Dial in Number:

Guest Passcode:

[REDACTED]

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 22 March 2021 11:41
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: FW: Global / Hamilton Inquiry

16.00 is OK. No idea why the email was blank. Probably my wifi failed.

James

On Mon 22 Mar 2021 at 11:21 <[REDACTED]@gov.scot> wrote:

Apologies, I think this might be a blank email? I also had a blank response to the DFM one as well as an email saying the meeting was ok.

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 22 March 2021 10:49
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: FW: Global / Hamilton Inquiry

On Mon 22 Mar 2021 at 10:22 <[REDACTED]@gov.scot> wrote:

Hi James,

The media enquiries have started... If you are minded to reply, I would suggest a line that says the report has been sent to DFM and the publication process is a matter for the SG.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@global.com>
Sent: 22 March 2021 09:55
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: Glasgow-News <Glasgow-News-Team@global.com>
Subject: Global / Hamilton Inquiry

I was wondering if there's any sense of a timetable for the Hamilton Inquiry's release today, and the publishing of the report.

Obviously it's being fairly widely reported now that its expected today, so any guidance would be hugely appreciated.

Regards,

[REDACTED]

Broadcast Journalist



██████████@global.com

██████████@heartscotnews



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Glasgow G2 1RW

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From: [REDACTED]
Sent: 22 March 2021 14:09
To: James Hamilton [REDACTED]
Subject: FW: Hamilton factual points

Hi James,

For information, these are the fact checking points raised by participants as part of GDPR notification. They are all minor I think.

Best wishes,

[REDACTED]
J

From: Henderson G (Gavin) <Gavin.Henderson@gov.scot>
Sent: 22 March 2021 14:06
To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Cc: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>; [REDACTED]
[REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: Hamilton factual points

[REDACTED]

As discussed:

- para 8.1 - Peter Murrell is the Chief Executive Officer of the SNP not the chairman
- page 6 - Stuart Nicolson's name has been misspelled as "Nicholson".

In relation to Lorraine Kay:

- 4.21 - If a title is required to be used, please use Ms, not Mrs.

- [REDACTED]

Gavin

Gavin Henderson | Deputy Director | OCT

RE: Letter and report- final documents [UNSCANNED]

From: [REDACTED] <[REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]@[REDACTED]>
Date: Mon, 22 Mar 2021 08:29:34 +0000

Hi James,

I agree that would be necessary as you are hoping to work with Eilish on recommendations on the code- I think it would be challenging for her to do that if she didn't get sight of the full report!

Best wishes,

[REDACTED]

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 22 March 2021 00:13
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Letter and report- final documents [UNSCANNED]

[REDACTED]

Thank you!

A small point- I would like Elish Angiolini who is also an independent adviser - to get a copy. I think she should get the unredacted copy. She would need to be told that it is confidential and only a redacted copy will be published.

James

On Mon 22 Mar 2021 at 00:04 <[REDACTED]@gov.scot> wrote:
Report and letter sent!

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 21 March 2021 18:56
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Letter and report- final documents [UNSCANNED]

Great!

On Sun 21 Mar 2021 at 17:49 <[REDACTED]@gov.scot> wrote:
Hi James,

I have had a look at the letter and note and didn't have any additional comments. I've attached the final version of both the letter and the report.

Best wishes,

[REDACTED]

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Report published

From: [REDACTED] <[REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]@[REDACTED]>
Date: Mon, 22 Mar 2021 16:39:19 +0000

Hi James,

The report is now published.

[Independent report by James Hamilton on the First Minister's self-referral under the Scottish Ministerial Code - gov.scot \(www.gov.scot\)](#)

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>

Sent: 22 March 2021 10:39

To: [REDACTED] <[REDACTED]@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>; Rogers D (David) (Constitution and Cabinet Director)
<David.Rogers@gov.scot>

Subject: Meeting with Mr Hamilton

Hi [REDACTED]

The DFM would be keen to have a word with Mr Hamilton at 16:00 once the report is published.

I would be grateful if you can check if this would be possible?

Many thanks

[REDACTED]

[REDACTED] | Interim Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government | Web: www.gov.scot | Tel: [REDACTED] | Mob: [REDACTED] | Email: DFMCSE@gov.scot

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From: [REDACTED]@gov.scot>
Sent: 22 March 2021 11:18
To: [REDACTED]@gov.scot>
Cc: Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>; Rogers D (David) (Constitution and Cabinet Director)
<David.Rogers@gov.scot>
Subject: RE: Meeting with Mr Hamilton

Hi [REDACTED]

I have checked with Mr Hamilton and 4pm would be fine with him. Could you let me know of the arrangements for the call?

Best wishes,

[REDACTED]

From: [REDACTED]@gov.scot>
Sent: 22 March 2021 10:39
To: [REDACTED]@gov.scot>
Cc: Deputy First Minister and Cabinet Secretary for Education and Skills
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Web: www.gov.scot [REDACTED] | Email:
DFMCSE@gov.scot

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From: [REDACTED] [REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills

Sent: 22 March 2021 11:29

To: [REDACTED]@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>; Rogers D (David) (Constitution and Cabinet Director)
<David.Rogers@gov.scot>

Subject: RE: Meeting with Mr Hamilton

Hi [REDACTED]

This will be using out conference call details.

Dial in Number:

[REDACTED]

Guest Passcode:

[REDACTED]

Thanks for your help with this.

[REDACTED] | Interim Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government |
Web: www.gov.scot | Tel [REDACTED] | Email:
DFMCSE@gov.scot

All e-mails and attachments sent by a Ministerial Private Office to another official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the primary recipient. Private Offices do not keep official records of such e-mails or attachments.

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Cc: Deputy First Minister and Cabinet Secretary for Education and Skills
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<David.Rogers@gov.scot>

Subject: RE: Meeting with Mr Hamilton

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Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 22 March 2021 10:39
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Subject: Meeting with Mr Hamilton

Hi [REDACTED]

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[REDACTED]

[REDACTED] | Interim Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government |
Web: www.gov.scot | Tel: [REDACTED] | Email: DFMCSE@gov.scot

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From: [REDACTED]@gov.scot>
Sent: 22 October 2020 11:22
To: [REDACTED]@gov.scot>
Subject: RE: James Hamilton- Ministerial code referral

That sounds fine by me, we will need to get him firm added to the list of payees.

[REDACTED] | Scottish Government | Cabinet, Parliament and Governance
Division | Tel: [REDACTED] | email: [REDACTED]@gov.scot

From: [REDACTED]
Sent: 22 October 2020 11:08
To: [REDACTED]
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

I think my intention would be that we pay the legal firm direct, on behalf of Mr Hamilton- that would seem simplest. I would still get the invoices, check they are in order and ask Mr Hamilton to confirm he is content, then we can raise the PO and pay.

Does that sound ok?

Best wishes,

[REDACTED]

From: [REDACTED]@gov.scot>
Sent: 22 October 2020 11:02
To: [REDACTED]@gov.scot>
Subject: RE: James Hamilton- Ministerial code referral

I'm not sure as was going to say we could raise a purchase order but Mr Hamilton will not be on the list – not sure if we can add personal names, I think it is just companies.

Maybe run this past Moira Mackay in our finance area and ask her what options do we have for paying Mr Hamilton.

If we get him added so that I can raise a PO then best way would be to get the invoice sent direct to yourself, if you are happy with it then to me and I can raise the PO, receipt the following day and send to finance to pay.

Let me know if you need me to do any more digging.

Thanks, [REDACTED]

Scottish Government | Cabinet, Parliament and Governance
Division | Tel: [REDACTED] | email: [REDACTED]@gov.scot

From: [REDACTED]@gov.scot>
Sent: 22 October 2020 10:26
To: [REDACTED]@gov.scot>
Subject: FW: James Hamilton- Ministerial code referral

Hi [REDACTED]

As discussed a few weeks ago and agreed with DFM and the [REDACTED] we have sourced independent legal advice for Mr Hamilton.

I think the simplest thing is for the invoices to come to SG direct- could you advise on what process we might apply to this to make things as straightforward as possible?

Happy to discuss.

Best wishes,

[REDACTED]

From: [REDACTED]@Advocates.org.uk>
Sent: 20 October 2020 12:03
To: [REDACTED]@gov.scot>
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

In relation to setting this case up on our systems for feeing. Can you advise on the following;

Case Name
Client Name
Your Ref no.
Confirmation on where fees are to be sent
PO No. if necessary

Thanks

[REDACTED]

[REDACTED] | Deputy Advocates' Clerk | Ampersand Advocates | [REDACTED]

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From: Shawn McArthur <shawn.mcarthur@Advocates.org.uk>
Sent: 22 October 2020 14:00
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

Thank you for sending this though. I have added a note to the case to send you any invoices.

Kind regards

Shawn McArthur | Deputy Advocates' Clerk | Ampersand Advocates | [REDACTED]
[REDACTED]

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From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 22 October 2020 13:03
To: Shawn McArthur
Subject: RE: James Hamilton- Ministerial code referral

Hi Shawn,

I have checked with my colleague as to how we should approach the invoices for this. Whilst Mr Hamilton is the client, SG will pay the invoices direct on his behalf as we will be covering any expenses associated with this work.

Case Name: Ministerial Code Referral

Client Name: Mr James Hamilton

Confirmation on where fees are to be sent: could you send invoices to me? I will then get a colleague to raise a purchase order number and arrange for the invoice to be paid.

PO No. if necessary: purchase orders will be raised for each invoice.

Please let me know if you need any other information.

Best wishes,

[REDACTED]

From: Shawn McArthur <shawn.mcarthur@Advocates.org.uk>
Sent: 20 October 2020 12:03
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

In relation to setting this case up on our systems for feeing. Can you advise on the following;

Case Name
Client Name
Your Ref no.
Confirmation on where fees are to be sent
PO No. if necessary

Thanks
Shawn

Shawn McArthur | Deputy Advocates' Clerk | Ampersand Advocates | [REDACTED]
[REDACTED]

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From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>
Sent: 20 October 2020 10:21
To: Sheena Hume <sheena.hume@Advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Hi Sheena,

Apologies for the delay, I wanted to double check things with Mr Hamilton and seek confirmation in writing that he was content to instruct. Mr Hamilton has now confirmed that he would like to proceed to instruct so we are fine to proceed.

[REDACTED]

I think the best thing would be if you could direct any future fees notice to myself and I will liaise with my colleagues here to organise payment. I'm going to double check with colleagues whether that is the best approach and will let you know if I need to make any modifications to this arrangement.

Best wishes,

[REDACTED]

From: Sheena Hume <sheena.hume@Advocates.org.uk>
Sent: 15 October 2020 14:52
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

[REDACTED]

Please advise if you intend to proceed to instruct. If you are able to advise who any future fee note should be directed to that would assist with setting up a case file at my end. I note you've advised Jennifer that the costs will be met the by Scottish government.

Kind regards.
Sheena

Sheena Hume | Deputy Advocates' Clerk | Ampersand Advocates | [REDACTED] |
ampersandadvocates.com

From: [REDACTED]@gov.scot [REDACTED]@gov.scot>
Sent: 15 October 2020 11:17
To: Sheena Hume <sheena.hume@Advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Hi Sheena,

Apologies, it [REDACTED] Thanks for spotting that.

Best wishes,

[REDACTED]

From: Sheena Hume <sheena.hume@Advocates.org.uk>
Sent: 15 October 2020 11:13
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

Thanks for your email to Jennifer which I've picked up in her absence. [REDACTED]

[REDACTED]

Kind regards.
Sheena

Sheena Hume | Deputy Advocates' Clerk | Ampersand Advocates | [REDACTED] |
ampersandadvocates.com

From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>
Sent: 15 October 2020 10:15
To: Jennifer Dunn <jennifer.dunn@advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Hi Jennifer,

Many thanks for getting back to us so quickly. I have spoken to Mr Hamilton about the timings and he thinks the timings set out below will work well, as we expect that the bulk of the work will be later into November.

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

From: Jennifer Dunn <jennifer.dunn@advocates.org.uk>

Sent: 14 October 2020 11:09

To: [REDACTED] <[REDACTED]@gov.scot>

Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

Thank you for confirming.

I have spoken with Mr Ross who would very much like to assist Mr Hamilton. As I mentioned on the phone he is fully engaged on a case with looming deadlines at the moment so has little to no time available between now and 30th October. Thereafter, beside the last week of November (w/c 23/11) where he is not available, he would have some time to assist. I'm not sure if that is helpful to Mr Hamilton but if you could confirm either way I would be grateful.

If Mr Hamilton would like to give Mr Ross a call he would be happy to speak to him. His mobile number is [REDACTED]

Kind Regards
Jennifer

Jennifer Dunn | Deputy Advocates' Clerk | Ampersand Advocates | [REDACTED]
(forwarding to: [REDACTED]) | ampersandadvocates.com

[REDACTED]

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From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>
Sent: 14 October 2020 10:53
To: Jennifer Dunn <jennifer.dunn@advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Hi Jennifer,

The line in the PQ referencing costs relates only to Mr Hamilton himself. The Scottish Government is covering the expenses incurred by Mr Hamilton in undertaking his work.

Best wishes,

[REDACTED]

From: Jennifer Dunn <jennifer.dunn@advocates.org.uk>
Sent: 14 October 2020 10:42
To: [REDACTED]@gov.scot
Subject: RE: James Hamilton- Ministerial code referral

Dear [REDACTED]

Thank you for your email. Can I clarify one point with you before I speak to Douglas. I note from the attachment that '*appointment as an independent advisor does not attract payment*'. Is that referring to Mr Ross not being paid for any legal advice he gives here or to something else? Many thanks.

Kind Regards
Jennifer

Jennifer Dunn | Deputy Advocates' Clerk | Ampersand Advocates | [REDACTED]
(forwarding to: [REDACTED]) | ampersandadvocates.com

[REDACTED]

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From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>
Sent: 14 October 2020 10:12
To: Jennifer Dunn <jennifer.dunn@advocates.org.uk>
Subject: James Hamilton- Ministerial code referral

Dear Jennifer,

Thank you for the phone conversation earlier this morning. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Happy to provide more information if that would be helpful.

Best wishes,

[REDACTED]

[REDACTED] Secretariat to the Independent Advisor under the Ministerial Code
| Please contact me on Skype or on [REDACTED]

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From: [REDACTED]
Sent: 22 October 2020 10:23
To: Douglas Ross [REDACTED]
Subject: RE: James Hamilton- Ministerial code referral

Dear Douglas,

Many thanks for confirming. If you were able to get comments back to us next week that would be great.

If you have any questions please feel free to get in touch, either by email or by phone.

Best wishes,

[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code
| Please contact me on Skype or on [REDACTED]

From: Douglas Ross
Sent: 21 October 2020 12:43
To: [REDACTED]
Subject: FW: James Hamilton- Ministerial code referral

Dear [REDACTED]

I'm sending this e-mail to confirm that your query (below) has been forwarded to me and that I will respond to it as promptly as possible. On account of an impending deadline in another pressing matter, that will likely be next week. Hopefully that will not be a problem, but do let me know if it is.

I'd be happy to discuss any matters arising by phone on the number below.

Regards

Douglas
Douglas Ross QC Ampersand Advocates

phone: [REDACTED]
web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)
Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: Shawn McArthur [REDACTED]
Sent: 20 October 2020 17:33
To: Douglas Ross [REDACTED]
Subject: FW: James Hamilton- Ministerial code referral

Dear Douglas,

Hope you are well.

I believe you have spoken with Jennifer previously about this case from SGLD.

[REDACTED]

Kind regards

Shawn McArthur | Deputy Advocates' Clerk | Ampersand Advocates | 0131 260 5616

COVID-19 – Ampersand remains open for business but with some changes to how we work. For the latest updates, please see our website [here](#).

From: [REDACTED]@gov.scot>
Sent: 20 October 2020 17:28
To: Shawn McArthur [REDACTED]
Subject: RE: James Hamilton- Ministerial code referral

Hi Shawn,

Many thanks, I will get this information to you tomorrow morning.

[REDACTED]

[REDACTED]

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

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RE: FW: Mr James Hamilton

From: [REDACTED] <[REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]@[REDACTED]>
Date: Thu, 22 Oct 2020 15:46:24 +0000
Attachments: Revised response to letter 2 from Mr Salmond- RW comments.docx (15.45 kB)

Hi James,

That's great, just wanted to check I hadn't missed anything. I have added the reference to the committee in the attached draft. Once you are happy with this do you want me to ask Mr Ross to consider it?

Happy to have a catch up- would tomorrow be ok? I have set up a document sharing service which I need to work out exactly how to use but can explain a bit more about, and also have updates to make on the video conferencing paper.

Best wishes,

[REDACTED]

From: James Hamilton
Sent: 22 October 2020 11:02
To: [REDACTED]
Subject: Re: FW: Mr James Hamilton

Dear [REDACTED]

Yes, the last paragraph is different. I am no longer giving him advice; just telling him what my approach is.

However, I seem to have dropped the reference to material sent to the Scottish parliament which I think you had inserted, and it probably should stay in. It was not included because it was not in my first draft but maybe you could put it back.

Do we need to discuss any of this? I should be at home all morning- I have a Zoom call at 2.00 pm which will probably last about an hour.

Best wishes

James

On Thu, 22 Oct 2020 at 10:06, <[REDACTED]@gov.scot> wrote:

Hi James,

I just wanted to double check if this is what you intended to attach, as it looks like the same text as the first draft but I might be missing something!

Best wishes,

[REDACTED]

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 20 October 2020 16:11

To: [REDACTED] <[REDACTED]@gov.scot>

Subject: Re: FW: Mr James Hamilton

Hi [REDACTED]

Please disregard uncompleted draft just sent to you in error.

I have done a further draft reply- attached.

James

On Tue, 20 Oct 2020 at 14:02, <[REDACTED]@gov.scot> wrote:

Hi James,

I've made some comments on the attached letter- I think that on the first point we can probably use some similar text to that in the first letter re. the legal clearance of the report, once we have Mr Ross' comments.

I think the second point is a bit trickier as I don't think we can offer advice on what Mr Salmond may choose to do, only to note what you are intending to do. With that in mind, I've suggested adding a line with your previous committee correspondence, as this makes clear the intended position re. publishing evidence.

If you get a chance, would you be able to look at the suggested response to the committee today, so I can respond by close of play if possible?

Best wishes,

[REDACTED]

From: James Hamilton <[REDACTED]@[REDACTED]>

Sent: 19 October 2020 16:29

To: [REDACTED] <[REDACTED]@gov.scot>

Subject: Re: FW: Mr James Hamilton

Hi [REDACTED]

Suggested reply to this further letter. You might let me have any comments with a view to running it too by Mr Ross.

Best wishes

James

On Mon, 19 Oct 2020 at 09:55, James Hamilton <[REDACTED]@[REDACTED]> wrote:

OK

On Sun 18 Oct 2020 at 13:24, <[REDACTED]@gov.scot> wrote:

Further correspondence from Mr Salmond with an additional question to consider. If you think it would be appropriate, I will send a short email on Monday confirming you have received the correspondence, are considering the questions posed, and will respond in due course.

From: Alex Salmond <alex@alexsalmond.scot>
Sent: 17 October 2020 12:34
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Mr James Hamilton

Mr James Hamilton
Independent Adviser on The Scottish Ministerial Code.

17th October 2020

Dear Mr Hamilton

Further to my letter of 8th October I await an answer to the questions posed or an acknowledgement of the email. Could you ask your staff to provide this?

I am now in receipt of several press queries on whether I have been in communication with you. My practice with the Parliamentary Committee has been to “no comment” but draw attention to the publication of correspondence. However, I doubt that it is your intention to publish correspondence and therefore I would wish your guidance on how to reply to these questions.

On which subject I enclose a letter which my lawyers sent to the Parliamentary Committee on 14th October, which is clearly relevant to your remit, however it be defined.

Yours sincerely

The Rt Hon Alex Salmond

Appendix 1

Dear [REDACTED]

WhatsApp Messages between Mr Salmond and First Minister

Thank you for your email of 13th October.

These are the additional messages we referred to in our letter of 27th November which were omitted from the First Minister's earlier submission. Apparently as a consequence of our informing the Committee of this omission, the First Minister has already read them out on live Sky News television in an interview with Sophy Ridge on October 11th without seeking our client's

permission to release his data. In these circumstances he considers that it would be perverse for him to object to them being seen and published by your Committee.

However, we make the assumption that you only intend to publish material relevant to the Committee's remit.

The message of 5th November 2017 is the First Minister initiating contact over a Sky News press inquiry while the message on 6th November was the First Minister wishing to speak further after an approach on the same subject from the Permanent Secretary. These are at least arguably relevant to the Inquiry and he is content that they are published.

The first two messages of 9th November concern the First Minister's objections to the launch of our clients TV Show that day on RT (as confirmed by her on Sky News) and are therefore not relevant to your enquiry and should not be published.

However the third message of 9th November beginning "Ps" is a direct reference to her earlier messages of 5th November and should be published.

Our client's message to the First Minister of 10th November is a continuation of our client's disagreement with the First Minister over the television show and a reference to the then bid for the Scotsman newspaper. As such it should not be published.

In addition, in our letter of 27th September we raised the question of the reasons for the redaction of the name of the person who had relayed the message from the First Minister that she wished to meet our client for a third time on this issue. You explained that it was the First Minister had redacted this information from our client's message of 13th July 2018 at 11.01am.

Since it was our client's message, we are aware of no legal reason for this redaction; it seems highly relevant to your deliberations and our client is content to see the message published in full. Can you please clarify the reason for redaction with the Scottish Government? Our client is content to provide a copy of the unredacted message.

However, we will leave the final decision on publication to your Committee. However we would ask that this information is shared with Committee members.

As we previously noted for completeness our client has a record of a missed call from the First Minister to our client at 13.05 on the 18th July.

Our client hopes that this is helpful.

Yours sincerely

David McKie
Partner

Levy & McRae Solicitors LLP
Pacific House
70 Wellington Street
Glasgow G2 6UA
www.lemac.co.uk

Mobile:
DD:
Tel:
Fax:



Sent from my iPad

On 6 Oct 2020, at 22:28, Alex Salmond <alex@alexsalmond.scot> wrote:

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the "court in the criminal proceedings". I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th October 2018. This was sought by my counsel and as I recall the

Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process. For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your enquiries.

You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee information gained in disclosure in the criminal proceedings they will be liable to prosecution. I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the Government to supply you with it. Your difficulty is that you do not know what it is and I am currently debarred from informing you.

Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd. However Mr Hynd was himself deeply involved in the Scottish Government's unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy. I do not dispute Mr Hynd's personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.

Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down. There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal

status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?

Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at alex@alexsalmond.scot.

Yours faithfully

The Rt Hon Alex Salmond

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Dear Mr Salmond

Thank you for your further letter of 17 October 2020.

Naturally any response to my enquiries relating to the factual matters I am asked to enquire into will be used in the compilation of the report. I have not yet decided fully on the format of the report but any reply to such enquiries will be liable to be published with the exception of material which cannot be made public as a result of court orders or for other legal reasons.

I have set out various matters relevant to your questions in my recent correspondence with the Parliamentary committee.

https://www.parliament.scot/HarassmentComplaintsCommittee/James_Hamilton.pdf

With regard to incidental queries it would not be my intention to publish them as a matter of routine and it would be my preferred option to make no comment pending the completion of my enquiries. However, I am concerned not to favour or be perceived to favour any particular interested party in the matter and therefore if I were asked questions concerning contacts between interested parties and me I might well think it proper or necessary in the public interest and in particular in the interests of transparency to give a full reply.

For that reason I cannot exclude the possibility that any correspondence between us might at some stage be published.

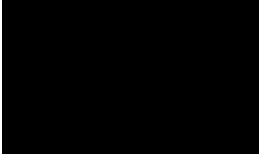
I hope this answers your question.

Yours etc



T: [REDACTED]
E: james.hynd@gov.scot

James Hamilton



23 January 2019

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: REFERRAL

I writing to you in connection with the First Minister's decision to refer herself to the Independent Advisers on the Ministerial Code. I re-attach a copy of the First Minister's statement to that effect.

As set out in her statement, the First Minister indicated that advice would be sought from the Independent Advisers on the terms of the remit. At the same time, she also noted that advice would be sought on how to ensure that there would be no risk of prejudice to the ongoing police investigation. We are still in the process of seeking advice on that latter point from the appropriate authorities.

Subject to the receipt of that advice, I am passing to you the current draft remit for your consideration at this time. We may, of course, need to adjust the remit to reflect the advice noted above, as well as taking into account your own views.

As I think you will also be aware, Dame Elish Angiolini has recused herself from involvement in this referral as she is already undertaking a policy review on behalf of Scottish Ministers.

Please let me know if it would be helpful to discuss the draft remit, or any other aspect of the referral.

Yours Sincerely

James Hynd



From: [REDACTED]
Sent: 23 February 2021 15:33
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED] [UNSCANNED]

Hi Douglas,

I've spoken to Mr Hamilton, [REDACTED]
[REDACTED]. He completely understands that you have other demands on your time at the moment and that this will affect the timescales this week.

In terms of the report, Mr Hamilton has had some time to consider the issues raised by the note we received last week, and thinks he has found a way to restructure the relevant bits of the report that keeps the sense of his considerations but will hopefully be closer to what could be published. [REDACTED]
[REDACTED]

The Parliament has now republished Mr Salmond's submission with redactions:

[Alex Salmond redacted.pdf \(parliament.scot\)](#)

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 23 February 2021 10:57
To: 'Douglas Ross' <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED] [UNSCANNED]

Hi Douglas,

Thanks for letting me know, I've sent this on to Mr Hamilton. [REDACTED]
[REDACTED]

In terms of the timings, it seems that the relevant issues are still very much under debate in relation to the Parliament publishing Mr Salmond's submission, so there's probably merit in seeing where these discussions settle in any case.

I've copied Mr Salmond's Ministerial Code submission, as published yesterday:

[Alex Salmond Ministerial Code\(1\).pdf \(parliament.scot\)](#)

And his other submission published yesterday for interest:

[Alex Salmond Final Submission.pdf \(parliament.scot\)](#)

According to Sky News, the Crown Office has asked the SPCB to redact the submission as published.

<https://twitter.com/jamesmatthewsky/status/1364145135630622720?s=20>

<https://twitter.com/jamesmatthewsky/status/1364145549600051200?s=20>

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>

Sent: 22 February 2021 21:33

To: [REDACTED]

Subject: RE: [REDACTED] [UNSCANNED]

Dear [REDACTED]

Thanks for this. I look forward to receiving [REDACTED], but please don't rush to get it to me first thing tomorrow. I am fighting on a number of fronts at the moment. The Ministerial Referral is, unfortunately, not the only matter in which I am involved in which there have been unanticipated developments! I am dealing with urgent issues in a couple of cases in which I have been instructed for a long time and hence cannot avoid. [REDACTED]

[REDACTED] I will, of course, turn my attention back to the Ministerial Referral just as soon as I possibly can. However, as matters stand, that looks like being Wednesday at the earliest, and possibly – depending on these other issues – Thursday or even Friday.

My apologies for any inconvenience that may cause, but it's better that I give you and Mr Hamilton a realistic estimate so that you can plan accordingly.

Happy to discuss any matters arising.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]

web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: [REDACTED]
Sent: 22 February 2021 16:07
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED] [UNSCANNED]

Dear Douglas,

As discussed, [REDACTED]
[REDACTED] Two of these are password protected with the usual password.

I will put together the [REDACTED] and send it over, hopefully first thing tomorrow.

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 22 February 2021 14:10
To: [REDACTED]
Subject: RE: [REDACTED]

Dear [REDACTED]

Thanks for this.

Please do send me [REDACTED]
[REDACTED]

Regards

Douglas

From: [REDACTED]
Sent: 22 February 2021 13:09
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED]

Dear Douglas,

Further to my email last week, please see response to your questions.

Mr Hamilton has suggested that I send you [REDACTED], which I will do in a separate email. [REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I have attached the statement Mr Hamilton read out during each interview.

From: [REDACTED]
Sent: 19 February 2021 10:08
To: 'Douglas Ross' <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED]

Dear Douglas,

Many thanks for this advice, I have forwarded your email to Mr Hamilton. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 18 February 2021 21:27
To: [REDACTED]
Subject: RE: [REDACTED]

Dear [REDACTED]

I was on the point of sending you a lengthy e-mail when your e-mail below came in. [REDACTED]

[REDACTED]

[REDACTED] had, naturally, not anticipated this

development and am committed to spending most of tomorrow (and probably a good deal of the weekend) on two other matters with urgent deadlines. While I will return to working on the Ministerial Referral ASAP, I'm afraid that it is likely to be next week before I am able to spend much time on it. In the meantime, I set out below a shorter version of the e-mail I had been about to send with preliminary observations and queries in relation to the matters on which you have sought my advice.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Happy to discuss any matters arising.

Regards

Douglas
Douglas Ross QC Ampersand Advocates

phone: [REDACTED]
web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: [REDACTED]
Sent: 18 February 2021 18:35
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: [REDACTED]

Hi Douglas,

Hope you are well.

I know you're looking at some of these issues at the moment and will have much more detail on this, but wanted to bring you up to speed on something we have received today. I've deliberately avoided detail of names etc. in case this causes any issues, but would be happy to discuss over the phone if that would be helpful.

[REDACTED]

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

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4. Mr Aberdeen and [REDACTED] meetings [REDACTED] [REDACTED]

4.1. There were meetings [REDACTED]

[REDACTED], Mr Geoffrey Aberdeen who had been Chief of Staff from 2011 to December 2014 during Mr Salmond's time as First Minister and who had left government service when Mr Salmond resigned as First Minister following the SNP's defeat in the independence referendum. [REDACTED]
[REDACTED]

4.2. [REDACTED] [REDACTED]

4.3. [REDACTED] [REDACTED]

4.4. [REDACTED]

[REDACTED] in the light of the "me too" movement, the increased focus on issues of harassment and in particular historic harassment, and the creation of a new procedure in government to address such issues, [REDACTED] if there was anything of that nature, from his time as Chief of Staff, [REDACTED]
[REDACTED]

4.5. A colleague had mentioned to [REDACTED] in passing the previous week that the content of an official briefing provided for First Minister's Questions on the issue of sexual harassment had changed. Where the briefing had previously given a clear answer of "No" to the question of whether there had been any complaints about current or former ministers, and had stated that fewer than 5 cases of sexual harassment had been

reported in the civil service the colleague had noticed that both of those statements had been removed, and a line about concerns having been raised and being considered in line with procedures was now the line that should be used. That line could have referred to either staff or ministers and did not state that an investigation was underway into a former minister or into Alex Salmond.

4.6. [REDACTED] was aware at that time of growing rumours about Mr Salmond but says that [REDACTED] was not at that stage aware of actual complaints made against him. [REDACTED]

4.7. Whilst discussing “me too” in general, [REDACTED] asked Mr Aberdein whether he was aware of anything [REDACTED] should be concerned about. According to [REDACTED] Mr Aberdein had no knowledge in relation to any other minister or former minister, but referred in general terms to two alleged incidents involving Mr Salmond. One was not sexual in nature.

4.8. In relation to the incident that was sexual in nature [REDACTED] said that Mr Aberdein gave [REDACTED] a general description of the incident which he presented to her as being in his view a minor incident, [REDACTED] says he named the person concerned. [REDACTED] says that he did not seem to think it was significant. [REDACTED]

4.9. The conversation about “me too” also referred to a 13 November 2017 allegation on Sky News that female staff at Edinburgh airport had expressed concern to airport managers about what they regarded as “inappropriate behaviour” which was not specified in the report. Mr Salmond was reported as “strongly denying” any wrongdoing and nothing more was ever heard of this matter. The alleged Edinburgh Airport incident is further discussed in Chapter 5 below. [REDACTED] referred to what [REDACTED] called “jungle drums” in the media about Mr Salmond ever since the “me too” movement became prominent in October 2017. [REDACTED] had apparently been approached on a number of occasions by reporters to ask if there had ever been complaints about ministers in general and Mr Salmond in particular.

4.10. According to [REDACTED], Mr Aberdeen suggested that Mr Salmond would not cope well with such allegations, but said he wasn't aware of anything further, and that he and Mr Salmond weren't really in touch that much anymore. There was no further discussion on the issue.

4.11. Mr Aberdeen in his account makes no mention of discussing any of these matters [REDACTED]. He states that any reference to Alex Salmond in that first discussion was in the context of media coverage, particularly concerning Alex Salmond's decision to host a show on Russian television around that time which was the subject of much controversy. It is agreed by [REDACTED] that this subject was indeed discussed at this meeting.

4.12. Mr Aberdeen, however, believes that the main purpose of [REDACTED]
[REDACTED]
[REDACTED]

4.13. [REDACTED]
[REDACTED]
[REDACTED]

4.14. [REDACTED] explains that [REDACTED] with increasing concerns that whether or not there was currently any investigation into Mr Salmond, it was possible there could be in the future as it was clear there could be something to investigate. [REDACTED]
[REDACTED]
[REDACTED]

4.15. [REDACTED] says that [REDACTED] indicated that [REDACTED] had reason to believe there might be a complaint and it could be about Mr Salmond. [REDACTED]
[REDACTED]

[REDACTED] says that Mr

Aberdein took [REDACTED] to mean that someone within government had told [REDACTED] of a complaint and began to name individuals who might have told [REDACTED]. He suggested that he would phone some contacts who had previously worked with him who would tell him if there was a complaint. [REDACTED] told him [REDACTED] did not know if there was a complaint and advised against making such calls as it seemed highly improper. If this is indeed what happened it would be hardly surprising that Mr Aberdein misunderstood [REDACTED].

4.16. Mr Aberdein has a very different recollection of this meeting. He states that it is his clear recollection that [REDACTED] informed him that the Scottish Government had received official complaints about Mr Salmond. He says that [REDACTED] told him that [REDACTED] did not know the full details of the complaints but that [REDACTED] did tell him there were two individual complainers and named one of them. [REDACTED]

4.17. If it were a simple matter of comparing the two accounts it would not be possible to be completely certain whose account is correct, although Mr Aberdein's account is more straightforward than the rather complicated account given by [REDACTED]. It is difficult to see how there can have been a misunderstanding as to what was actually said despite [REDACTED] explanation of how [REDACTED] thinks that Mr Aberdein misunderstood what [REDACTED] was saying.

4.18. However, whether it is the case that [REDACTED]
[REDACTED]
[REDACTED] There is no evidence to disprove this account.

4.19. [REDACTED]
[REDACTED]
[REDACTED] well aware that under the Procedure harassment complaints were required to be treated

in confidence and the First Minister was required not to be involved in any way in dealing with such complaints. It seems to me unlikely that the First Minister would have welcomed being potentially compromised by having rumour or gossip about such a matter [REDACTED].

4.20. Mr Aberdeen states that it was [REDACTED]

[REDACTED] Furthermore, what Mr Aberdeen later told Mr Salmond turned out in fact to be correct.

4.21. Mr Aberdeen contacted Mr Kevin Pringle and Mr [REDACTED] by telephone to inform them of what [REDACTED] had said about the complaints and to seek their advice about what he should do. They advised him to tell Mr Salmond. Mr Pringle has confirmed this account of what happened. Mr Hamilton declined to make a statement to me in view of his professional relationship with Mr Salmond. Mr Aberdeen then informed Mr Salmond by telephone of what [REDACTED] had told him. The fact that Mr Aberdeen informed these three individuals of the conversation shortly after it took place and that the information conveyed by him proved broadly correct tends to support his version.

4.21. So far as concerns the significance of the meetings between [REDACTED] [REDACTED] Mr Aberdeen for the question of a breach of the Ministerial Code, if one accepts, as I do, that [REDACTED]

[REDACTED] provide no evidence of any breach of the Ministerial Code by her. The meetings do, however, show that there was gossip and rumour about Mr Salmond at that time.

5. When did the First Minister become aware that there were allegations against Mr Salmond?

5.1. The First Minister had been aware of the report on Sky News on 13 November 2017 referred to in paragraph 4.9 above. The report led to her having a “lingering concern” about Mr Salmond. She describes it in an interview with me in the following terms:

Round about the beginning of November 2017, just to put you in the picture, as you will recall this was at the time the whole world really was talking

about the “me too” allegations, and, you know, organisations, governments, parliaments everywhere were trying to make sure they had the right processes in place. And this was around about the time we got a query from Sky News. By “we” I mean the SNP, not the Scottish Government, and that was about allegations that had been made by people at Edinburgh airport about conduct on the part of Alex Salmond.

At that point I spoke to Mr Salmond about it. You know as far as I was aware at that point we were about to see a story appear on Sky News. I spoke to him the morning after we got the press query. He seemed pretty shaken by it at that point and said he had to get to the bottom of what it was. I spoke to him again later that day when he appeared much more bullish. But the following day the Permanent Secretary had indicated to me that he had been, or his lawyers, or a bit of both, I’m not sure, had been contacting people in the Scottish Government effectively asking people that he had worked with or that might have been with him going through Edinburgh Airport to back him up and that that has caused a bit of, some disquiet on the part of those people who had been contacted. And she asked me to ask him to stop that, which I did, and he said he already had all the information he needed. So I suppose the two things that just left me with a lingering concern was the fact that- and I struggle really to go beyond what I’m about to say to you- that his contacting people in the Scottish Government had appeared to almost stir something, a hornet’s nest had been stirred kind of thing. That was the impression I got. And then he said something to me about, you know, you can’t have stories like this running because you get one and the flood gates will open kind of thing, which he immediately qualified and said “oh no, that’s not to say that I think there is anything there”. But it was just the combination of things left me with a “is there something that is about to come forward about Mr Salmond’s behaviour?” It wasn’t something I thought about every day, or worried me everyday, but it was there in the back of my mind, and that I suppose is the back drop to what unfolded at a later stage.

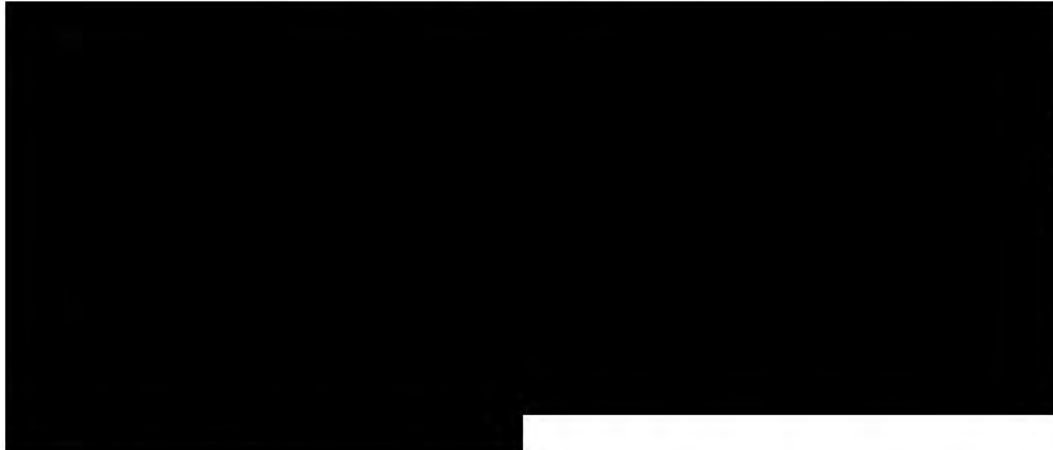
5.2. Nothing more seems to have been reported about the Edinburgh Airport incident subsequently. As already discussed the First Minister says she first became aware of the fact that complaints against Mr Salmond had been made at the meeting on 2 April discussed below. I am not aware of any evidence which would disprove her account.

6. The meeting on 29 March 2018

6.1. On 29 March 2018 there was a meeting between the First Minister and Geoff Aberdein, former Chief of Staff to Mr Salmond, which took place

in the First Minister's office in the Scottish Parliament. [REDACTED]

6.2 The First Minister described in an interview with me the circumstances in which the meeting was held as follows:-



JH: and then was he brought into your office? Was this just a discussion in the corridor so to speak?

FM: No no, we had been outside, just I don't expect you to visualise my office in Parliament but there is you know outside my office is where civil servants, special advisors work, so the member of staff whose birthday it was, civil servant, incidentally, we were outside there doing the birthday cake, singing happy birthday and Geoff had asked for a word and we went in to my office. Again, just to be clear, that would not have been the first time since Geoff had left as Chief of Staff, after I became First Minister that he had been in the office for something and had stepped in to my room for a chat. We were friends, you know, we are friends. And so he stepped into my room. From memory, I don't think was a particularly long conversation but it took place in my office.

JH: And did he give you any details at that stage about what it was about?

FM: Not, and this is where, so a combination of what I remember about this meeting and then what actually happened at my house on 2 April which we will come on to, make me very firm to the best of my recollection. Remember, this 29 March meeting had never been a significant event in my mind. To the best of my recollection no he did not give me details, it was very much he wanted to get me to agree to see to see Alec. Alec and I were very close but we hadn't been speaking as much as normal, you know I was First Minister, he was off doing other things, he had lost his seat. He wanted me to see Alec and agree to a meeting. He was telling me that he was very worried about Alec, a lot of the discussion was about Alec's state of mind. You know he seemed to be indicating that he had never heard Alec be quite so upset about anything previously, that he was very distressed, that he thought he might be about to resign his SNP membership because

of the nature of the issue he was upset about. I do believe that I, partly down to what he was telling me, partly down to the Sky lingering concerns, that it was in the realms of a potential concern or complaint about sexual misconduct. But, you know in my mind, and this was not unusual; Alec and I have worked incredibly closely for a long time, if I was being told he wanted to tell me something, in my mind I would have had to see him and hear what he wanted to tell me. That's basically, I had a general sense that it was something serious, something in the realms of a sexual complaint potentially, and he was very upset about it but I agreed, we didn't set the date of the meeting with Alec at that point, [REDACTED]. But I was very clear, I was agreeing to see Alec as a friend, I was being told he was in a state of considerable distress, but also as the leader of the SNP, I was being led to believe he was on verge of resigning his membership of the party.

6.3. Mr Aberdeen agrees that the initiative for this first meeting came from his making an approach on behalf of Mr Salmond. Mr Aberdeen attended the Scottish Parliament on 29 March, joining celebrations for the sixtieth birthday of a colleague. The First Minister also briefly joined the party and [REDACTED] they stepped into the First Minister's office to discuss Mr Aberdeen's concerns. During the conversation Mr Aberdeen again raised the incident which [REDACTED] though his main purpose at the meeting was to persuade the First Minister to meet Mr Salmond. She does not believe the discussion took longer than ten minutes, though Mr Aberdeen was in parliament for a longer period, socialising with former colleagues. The meeting on 2 April resulted from that short conversation.

6.5. Sometime following a call to Mr Salmond early in March Mr Salmond intimated to Mr Aberdeen that he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. Mr Aberdeen cannot be precisely certain when and how this was arranged but [REDACTED]

6.6. Thereafter, he believes he may [REDACTED]

6.7. Mr Salmond's account of how the first meeting came about is that he was contacted by phone on or around 9 March 2018 and again the following week by Geoff Aberdeen, his former Chief of Staff. The purpose

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]